

Fair and Legal Management:

# Fair and Legal Hiring Practices



## Overview:

When it comes to making hiring decisions, supervisors should be driven to find the best possible candidate for the job. Both state and federal laws, as well as University of Florida Regulations, prohibit hiring decisions that are based on, or influenced by, discriminatory biases. The University of Florida cannot discriminate based on what are called “protected classes”. These include characteristics such as race, creed, color, religion, age, disability, sex (including pregnancy), sexual orientation, gender identity and expression, marital status, national origin, political opinions or affiliations, genetic information, or veteran status. See a sample list of applicable laws further below.

The best approach in hiring practices, is to simply focus on the job’s key tasks and responsibilities. Base interview questions on the skills, abilities, and experiences required by the job. Ask the applicant about their qualifications for and interest in the job. Keep in mind, the goal of hiring is to select the person most qualified to perform the job’s essential functions and contribute to the success of your area and UF as a whole! Using behavioral based interview questions is a great way to focus on what you really want to learn from an applicant, while also preventing questions that could have a discriminatory intent. Access the [Behavioral Based Interview Guide](#) here. It is also wise to have an interview script with all questions already written out, so that all interviewees are asked the same questions. It’s also important to note that you should keep all questions related to the job.



Sometimes, supervisors inadvertently violate a person’s rights letting unconscious bias creep into their decision-making process. Unconscious biases are social stereotypes about certain groups of people that individuals form outside their own conscious awareness.

**Why it matters:**

Fair employment laws exist to protect applicants from biases or generalizations that may affect our objectivity in making a hiring decision. Developing questions that focus on the tasks and required job skills rather than protected traits will guide you to the appropriate candidate for hire.

**Question Examples:**

Supervisors can also accidentally violate a person’s rights by asking seemingly innocent questions. Some examples are listed below, along with an explanation of why these are risky questions. As you review the list, also ask yourself, in addition to being risky questions, are any of these questions even relevant or helpful in deciding whether an applicant is qualified for a job? They certainly do not seem to be.

<b>Don’t Ask</b>	<b>...And Here's Why</b>
<p><i>That’s an interesting accent, what country are you from?</i></p> <p>But note, it is okay for applicants to share whether they are authorized to work in the United States (this is asked through the online application process, so there is no need to ask this during an interview).</p>	<p>While this question may seem innocent enough, you are really asking the interviewee to disclose their national origin.</p> <p>National origin is a protected class under both state and federal law, as well as through UF Regulation 1.006. Like race and color, you cannot use national origin as a basis for not hiring someone.</p>
<p><i>How long do you plan to work until you retire?</i></p> <p><b>But note</b>, it is okay to ask about an applicant’s career aspirations (e.g., where do you see yourself in 5 years). Just be sure you ask <b>all</b> applicants the same</p>	<p>Although it may seem that an employer would want to know how long a prospective employee may work before retiring (especially if they appear older), you cannot use age as a variable in weighing whether an applicant may be the most qualified person for the job.</p>

<b>Don't Ask</b>	<b>...And Here's Why</b>
<p>questions, not just those you think may be older.</p>	<p>Age is a protected class under both state and federal law, as well as through UF Regulation 1.006. You cannot use age as a basis for not hiring someone.</p>
<p><i>Where do you go to church?</i></p> <p><b>But note</b>, if the position requires employees to work weekends (Saturdays and/or Sundays), it is okay to ask about the applicant's availability. For example, it's okay to ask: What days and shifts can you work? Are there shifts you cannot work? Are there any responsibilities you have that could make it difficult for you to travel for work? If the answer is no, the reason isn't really important. No is no.</p>	<p>Like national origin and age, religion is also a protected class. You should make no presumptions about what religion (if any) an applicant practices. In addition to employment laws, UF is a state agency. Consequently, additional religious protections (separating church from state) apply under the First Amendment of the U.S. Constitution. You simply cannot inquire about an applicant's religion or religious beliefs. You cannot use religion as a basis for not hiring someone.</p>
<p><i>Do you have any disabilities that would prevent you from doing this job?</i></p> <p><b>But note</b>, it is okay to accurately describe the job then ask the candidate if they can perform all of the functions. Remember to ask <b>all</b> applicants the same questions, not just those you think may have a disability</p>	<p>Discriminating on the basis of disability is clearly prohibited under state and federal law, as well as through UF Regulation 1.006. Research studies show that people with obvious or known disabilities are less likely to get hired even when they are able to perform the essential functions of the job (with or without a reasonable accommodation).</p>
<p><i>You look like you were in the military. Did you ever serve?</i></p> <p><b>But note</b>, if an applicant asks you about whether UF offers any type of veterans' preference, you can refer them to <a href="#">UFHR - Talent Acquisition &amp; Onboarding</a>.</p>	<p>There is no reason to speculate—let alone ask—about an applicant's military status. This, too, is a protected class. Some people disclose this during the application process, some put it on their resumes, and some do not.</p>

<b>Don't Ask</b>	<b>...And Here's Why</b>
<p><i>Are you comfortable working for a female boss? Or, are you comfortable working with a largely female team?</i></p> <p><b>But note</b>, you can certainly ask about an applicant's ability to collaborate with others and be a supportive colleague. It is also okay to ask an applicant how they respond to job coaching or performance feedback. It's fine to ask an applicant to describe their ideal boss.</p>	<p>First, if an applicant knows the answer to this question really is no—they are never going to tell you that. Asking an applicant to essentially admit a sex bias is not really fair (or productive). The same would be true if the question asked about working for a younger boss or working with a team that is largely of a different race than the applicant.</p>
<p><i>What does your wife do for a living?</i></p> <p>But note, if an applicant asks whether UF offers any spousal accommodations, you can refer them to <a href="#">UFHR - Talent Acquisition &amp; Onboarding</a>.</p>	<p>This question may seem benign—especially if you note a wedding band. However, you should not presume or pry when it comes to marital or familial status. This question also shows presumptions about an applicant's sexual orientation. These are all protected classes.</p>
<p><i>Are you planning on having children?</i></p> <p><b>But note</b>, if what you really want to know is whether an applicant is free to travel or will be committed to the job, that's what you should ask. It is okay to ask: Do you have any restrictions that would prevent you from traveling? Do you have any commitments that will conflict with your work schedule? Again, just be sure you ask <b>all</b> applicants the same questions, not just the women.</p>	<p>Familial status, marital status, and pregnancy are all protected classes. Even if the applicant may not belong in those classes today, asking about whether they may in the future is equally off limits.</p>

## Applicable State and Federal Laws:

### Key Federal Laws:

- **The Equal Pay Act of 1963 (EPA)**  
Makes it illegal to pay different wages to men and women if they perform equal work in the same workplace.
- **Title VII of the Civil Rights Act of 1964 (Title VII)**  
Makes it illegal to discriminate against someone on the basis of race, color, religion, national origin, or sex.
- **The Pregnancy Discrimination Act**  
Amended Title VII to make it illegal to discriminate against a woman because of pregnancy, childbirth, or a medical condition related to pregnancy or childbirth.
- **The Age Discrimination in Employment Act of 1967 (ADEA)**  
Protects people who are 40 or older from discrimination because of age.
- **Veterans' Readjustment Act of 1974**  
Prohibits discrimination based on veteran status or special disabled veteran status in federally assisted programs.
- **The Immigration Reform and Control Act of 1986 (IRCA)**  
Prohibits employers from discriminating against applicants and employees on the basis of their citizenship or national origin.
- **Title I of the Americans with Disabilities Act of 1990 (ADA)**  
Makes it illegal to discriminate against a qualified person with a disability in the private sector and in state and local governments.
- **Uniformed Services Employment and Re-employment Rights Act of 1994 (USERRA)**  
Prohibits discrimination in employment based on military affiliation.
- **The Genetic Information Nondiscrimination Act of 2008 (GINA)**  
Protects individuals from genetic discrimination in health insurance and employment.

### Key State Laws:

- **The Florida Civil Rights Act of 1992**  
This law protects individuals, including in employment matters, from discrimination because of race, color, religion, sex, pregnancy, national origin, age, handicap, or marital status.
- **Florida Veterans Preference, Chapter 296 of the Florida Statutes**  
This law provides some preferential treatment during the application process for qualifying veterans and spouses of veterans for certain positions at the University of Florida (and other governmental employers within Florida).



## Additional Resources

To assist you with the UF hiring process please consult the appropriate recruitment checklist found in the [Careers at UF Toolkit](#). These checklists serve as a tool to assist hiring managers, department administrators and search committees when recruiting candidates for positions in alignment with the UF recruitment policies and procedures along with federal guidelines and statutes.

UF Regulation. 1.006 prohibits discrimination and harassment.

