

GUIDE TO CONDUCTING A SEARCH

Equal Opportunity Office
Eastern Kentucky University

Introduction

Eastern Kentucky University is an equal employment opportunity and affirmative action employer. President Glasser is committed to seeking to achieve diversity among the faculty and staff. Sandra Moore, Special Assistant to the Provost for University Diversity, is available to provide assistance to search committees in this area. In order to further the effective practice of equal opportunity and affirmative action in faculty hiring initiatives, specific faculty recruitment, selection and appointment procedures are to be followed.¹ Should you have any questions regarding these procedures, please contact the appropriate dean's office, the Provost's Office, or the Equal Opportunity Office.

As a federal contractor, Eastern Kentucky University is required to engage in outreach and other good faith efforts to broaden the pool of qualified candidates to include groups previously excluded. "The actual selection decision is to be made on a non-discriminatory basis."² **Affirmative action** is a set of positive steps that employers use to promote equal employment opportunity and to eliminate discrimination. **Equal employment opportunity** is the right of individuals to treatment on a non-discriminatory basis. These are proactive concepts that imply aggressive, vigorous, and systematic activities to achieve equality and equity for all.

As a Kentucky public post-secondary institution of higher education, Eastern Kentucky University is also subject to the Kentucky Plan and Senate Bill 398. The Kentucky Plan was designed in response to the Office of Civil Rights' notice to the Commonwealth of Kentucky that it was one of ten states operating a racially segregated system of higher education in violation of Title VI of the Civil Rights Act of 1964. The purpose of the Kentucky Plan is to provide remedial activities through increased recruitment and retention programs for African American students and desegregating faculties, staffs and governing boards to eliminate the vestiges of the formerly segregated system of higher education and to bring Kentucky's institutions of higher education into compliance with Title VI. Senate Bill 398 and its implementing regulations established the criteria used to determine an institution's compliance with equal opportunity objectives established under the Kentucky Plan and augments the Kentucky Plan. If you have questions regarding the Kentucky Plan or wish to request further information, please contact Sandra Moore, Special Assistant to the Provost for University Diversity.

¹ Under special circumstances, a faculty search may not be required. In these instances, the Equal Opportunity Office will review exemption requests upon receipt of a *Request for Exemption* and memorandum of justification (where warranted) indicating the reason that the exemption is appropriate. ***Prior written approval from the Provost, the Dean, and the Equal Opportunity are required for all exemptions.***

² "Facts on Executive Order 11246 -- Affirmative Action, Part C(i), Executive Order Affirmative Action Requirements for Supply and Service Contractors" (revised January 2, 2002) (<http://www.dol.gov/esa/regs/compliance/ofccp/aa.htm>)

This guide addresses the role of the Equal Opportunity Office and the Search Committee in the search process.³

Equal Opportunity Office

The Equal Opportunity Office serves two primary roles in the search process:

- 1) To be a resource on all aspects of the recruitment and selection process; and
- 2) To monitor the process for purposes of
 - a) Reaching a broad pool of candidates,
 - b) Ensuring qualified candidates are given equitable consideration,
 - c) Strengthening EKU's efforts in hiring members of underrepresented groups,
 - d) Maintaining necessary documentation of good faith efforts taken towards attainment of equal opportunity/affirmative action/CPE goals, and
 - e) Maintaining records of the entire search process.

Please feel free to contact Virginia Underwood or Jenny Allen in the Equal Opportunity Office to meet with a search committee, to answer questions or to otherwise assist in any manner appropriate before or during any stage of the search process.

Search Committees

When forming a search committee, include diverse representation on the committee to the extent possible.

The Search Committee is on the front line of the recruiting and selection process and has the opportunity and responsibility to enhance the academic quality and diversity of their departments and the institution as a whole. Included among the role of the search committee are the responsibilities to:

- Seek to create an inclusive pool of candidates,
- To determine duties of and qualification required for the position,
- Decide how and where to advertise,
- Maintain confidentiality,
- Recommend candidates for interviews,
- Conduct interview (telephone and on-campus),
- Conduct reference checks,
- Recommend candidates for consideration to the appointing official,
- Keep complete and accurate documentation on the search process,

³ The information in this outline is based in part on the search guidelines from the University of Virginia, Kristine L. Kaplan, "Working with Your Faculty on Faculty Recruitment and Hiring" (NACUA 2002), and Christopher D. Lee, PhD, *Search Committees: A Tool Kit for Human Resource Professionals, Administrators, and Committee Members* (CUPA 2000).

- Comply with all University policies and laws applicable to the recruitment and selection process⁴, and
- Be good representatives of the University.

To assist in successfully completing these responsibilities, the Search Committee should establish a proposed time frame in which to:

- Draft an advertisement and/or announcement of the position;
- Publish advertisement;
- Develop a check list of items to be received from applicants (you can notify applicants of incomplete applications, but if you do, you must do for all applicants);
- Send acknowledgment letter upon receipt of applicant's materials; may include information about the search committee's time frame and may be used to request additional information such as copies of papers/publications, statement of educational/teaching philosophy; an **Affirmative Action Compliance Program Information Form** (available at <http://www.president.eku.edu/EqualOp/forms/complianceform.htm>) should accompany letter along with a return postage prepaid business reply envelope; the letter should always include language that completion of the form is voluntary and the information the applicant provides is used for analysis purposes for the University's equal opportunity/affirmative action program (See Appendix E);
- Receive applications;
- Review applications;
- Screen and evaluate applications;
- Interview; and
- Make final recommendation.

With respect to the above, the following provides additional guidance:

Advertising

A good ad/announcement is critical to attracting a well-qualified applicant pool and to the overall success of the search. Please see Appendix A, Job Advertisement Checklist, adapted from Christopher D. Lee, Ph.D., *Search Committees: A Tool Kit for Human Resource Professional, Administrators, and Committee Members* (College and University Professional Association for Human Resources, 2000), for guidelines concerning ad content and structure. The University has adopted a uniform University Diversity Statement to be included on all ads/announcements. This statement can be viewed in Appendix B.

⁴ An inadequate or badly run search may a university to increased liability including among others, discrimination, defamation, negligence for conduct during the process, or "negligent hiring" for employees chosen without adequate reference checks.

Recruiting

While budgets often limit the placement of ads, good recruitment activities are necessary to ensure an adequate pool of diverse, qualified applicants. Sandra Moore, Special Assistant to the Provost for University Diversity, is available to assist you in this area. Also, see Appendix C, Recruiting Strategies and Resources, for recruiting ideas, as well as <http://www.president.eku.edu/EqualOp/selection.php>, which includes a listing of historically minority and women's colleges and universities, journals, directories, websites, and magazines, and other recruiting resources.

Confidentiality

The following recommendations are provided for addressing confidentiality in a Search Committee.

- The Search Committee should preserve integrity and candor of member-to-member discussions and identity of candidates.
- Limit discussions within EKU to those from whom it is appropriate to seek input or who otherwise have a need to know; outside, limit discussions to those who are formally/informally serving as references or recruiting sources. Also, see information under references.

The Search

Establish Criteria

All criteria used to evaluate applicants must be job-related. Refer to the advertisement for the position to determine the criteria for meeting minimum requirements. A well-conceived, well-written description provides the criteria on which interview questions are based. All committee members should clearly understand and endorse the qualifications expected and the standards used for applicant evaluation.

Review Applications

- Use advertisement/criteria to conduct initial screening of applications.
- Applicants who do not meet the basic requirements should be notified that they are not being considered for this reason. Please see Appendix G for a sample letter written for this purpose.
- **Evaluate candidates consistently.** Consistency is the most important factor in determining if a search has been conducted equitably.
- Rate applications based on previously developed selection criteria/screening procedures
- Written comments showing judgment of each committee member should be made for every candidate. This practice speeds up process of selecting interview list and saves time if you have to go back to the pool.

- Shows efforts of committee to comply with equal opportunity and affirmative action requirements
- Keep comments legitimate and job related. All notes and other search documentation become a part of the search file and are not a committee member's private property. All search materials should be collected and maintained at the close of the search. Please see the *Retain Search Records* part of this section.

Check References

- The timing of references and maintaining confidentiality are two critical aspects of reference checks.
- The search committee should designate either the committee as a whole or pairs of members to conduct reference checks in a consistent manner.
- Use prepared questions; consistent questions should be asked of all references
- Unfortunately, unsolicited information that is inappropriate or discriminatory may be provided by the reference. Such info should be ignored. Rule of thumb: "Do not discuss anything with references that could not be discussed with applicants themselves." Please see the *Conduct Interviews* part of this outline.
- Off-list references should be conducted prior to an offer and only finalist candidates only. Obtain the consent of the candidate before going off list. Some search committees may prefer conducting off list references prior to selecting finalists for on campus interviews.

Conduct Interviews

Interviews, including telephone, videoconference and on campus, are one of the most critical stages of recruitment process.

- The Search Committee should draft a group of core interview questions based solely on job-related criteria.
- Ask the same questions of all candidates. This provides for comparative judgments and ensures that crucial job-related information is obtained. Also, it minimizes unconscious biases and/or preferences.
- It may be useful to print questions on a form with space for committee member to record candidate's responses and interviewer's evaluation. All notes become part of search committee file.
- For on campus interviews, treat all applicants same (i.e. information/information folders provided to candidates; opportunities to meet department members, staff, students, dean, etc.) Remember that good candidates will be interviewing us as much as we'll be interviewing them.
- Concentrate on job-related questions and avoid inquiries with a discriminatory implication.

- Committee members need to know what information may legitimately be sought during the interview and should avoid any question that could signal an illegal bias or discrimination. Please see Appendix I and Appendix J for guidance on this issue.
- Some questions may be viewed as discriminatory, such as questions about ethnic background or sexual orientation.
- Some questions may have potential to elicit information that is improper to use in making a decision (i.e. marital/family status).
- Volunteered information from the interviewee may become problematic if it is used in the selection/hiring decision.
 - Example: Applicant mentions being divorced, talks about children, childcare arrangements, recovering from illness, elderly parent needs, etc. If this information is used to eliminate an otherwise qualified applicant, applicant could later allege discrimination on one or more bases.
 - How should you handle this information?
 - Do not write the information down
 - Do not ask follow up questions or make statements to continue in the area of discussion
 - Do not consider the revealed information in evaluation the applicant's candidacy
 - Refer the applicant to sources that may answer the questions (Faculty/staff handbook, benefits source, information about resources in the Richmond/Madison County community, etc.)
 - Return the discussion to job related issues
 - The question for the search committee is whether the candidate can meet the attendance and time requirements of the position. This should be the focus, not the personal needs or responsibilities of the candidate. Turn any such comments around at the appropriate time by stating the requirements of the position and asking whether the candidate would be able to meet those requirements.

Conclude Process

- Meet to review merits of each individual.
- Prepare interview summations. Each committee member should prepare a summation.
- Identify strengths/weaknesses of the finalists.
- Make recommendations. The committee's recommendations should clearly articulate an indication of why the recommended applicant is the most qualified

Retain Search Records

Adequate records must be maintained at all points in the screening and interviewing processes. These records and the applications and related

materials should be forwarded to the committee chair or a designated committee member for maintenance and storage. Search records are to be maintained for a period of five years from the date of hire, unless circumstances require a longer period of retention.

APPENDICES

- A. Job Advertisement Checklist
- B. University Diversity Statement
- C. Recruiting Strategies and Resources
- D. Sample Search Timeline
- E. Sample Applicant Acknowledgment Letter with Compliance Form Language
- F. Sample Letter to Persons Whose Names Have Been Submitted for a Search
- G. Sample Letter to Applicants Who Do Not Meet Minimum Position Requirements
- H. Sample Letter to Applicant Who Are Not Selected As Finalists
- I. Conducting Interviews
- J. I-9 Guidelines and the Recruiting Process

APPENDIX A

Job Advertisement Checklist

Description of Job

- Position title (descriptive, working, or official)
- Essential functions/major duties and responsibilities
- Reporting relationships
- Information about the organization that would attract candidates
- Salary range, if appropriate and desired

Preferred Criteria

- Special abilities or experience
- Membership or leadership in professional associations

Job Requirements

- Knowledge, skills, abilities required for the job
- Education (degree and field)
- Licensure (if required or preferred)
- Experience (type, number of years, and field)
- Unique requirements of department or organization
- Technical expertise or other special requirements

Information Sought

- Letter of interest
- Resume or curriculum vitae
- Statement of teaching or leadership philosophy
- Samples of publication or other work, if appropriate
- References and their full contact information
- Letters of recommendation
- Copies of transcripts

Information to be Provided to Applicant

- Closing date or application review date
- Position availability or start date
- Application address (including fax number and/or email address, if appropriate)
- University Diversity Statement (see Appendix B)
- Point of contact information (office assistant, hiring authority, search committee chair, or HR)

Ad Placement

- Place ad in places most likely to attract appropriate applicants
- Place ad in minority media
- Place code in ads to determine which ad yielded best applicants

- Determine where in the printed media the ad will appear and under what heading
- Size the ad to reflect the type of position in question, the relative availability of applicants (tight job market = bigger ad), and advertising budget
- Seek advice and assistance from the staff of the publications in which ads were placed
- Seek advice and assistance of Sheila King in HR when placing ads

Adapted from Christopher D. Lee, PhD, *Search Committees: A Tool Kit for Human Resource Professionals, Administrators, and Committee Members* (CUPA 2000).

APPENDIX B

University Diversity Statement

Eastern Kentucky University is an EEO/AA institution that values diversity in its faculty, staff, and student body. In keeping with this commitment, the University welcomes applications from diverse candidates and candidates who support diversity.

APPENDIX C

Recruiting Strategies and Resources

The following are recommendations for conducting recruitment of qualified minorities and women:

1. Consult with Sandra Moore, Special Assistant to the Provost for University Diversity, regarding recruiting strategies.
2. Advertise vacancies in publications that have a broad based audience, such as the *Chronicle on Higher Education*, and publications with a targeted audience, such as *The Affirmative Action Register*, *Black Issues in Higher Education* and *The Hispanic Outlook in Higher Education*.
3. Notify predominantly minority and women colleges and universities of vacancies. The Equal Opportunity Office can provide mailing labels of these institutions to departments. (See list on EEO web page. The institutions that a department or search committee selects may depend on the qualifications necessary for the position, the strength of a program at an institution or consideration of the number of prospective applicants from an institution.)
4. Check directories of minority and women academics in the discipline. Send copies of ad to individuals or their departments or both. See additional information at <http://www.president.eku.edu/EqualOp/jnldirmag.shtml> for national searches and <http://www.president.eku.edu/EqualOp/localagencies.shtml> for local and regional searches.
5. Send the position announcement to the top ten or more minority and women producing Ph.D. producing schools.
6. Send the position announcement to professional organizations.
7. Contact minorities and women at ECU for referrals/nominations of qualified minorities and women.
8. Post the position on ECU's website and departmental website
9. Explore posting the position on listservs appropriate for the particular discipline and position.
10. Post the position with the Southern Region Education Board's Doctoral Scholars Program by sending an electronic copy of the announcement to Jobs Listing (WWW.SREB.ORG; DOCTORAL.SCHOLARS@SREB.ORG)

APPENDIX D

Sample Search Timeline

Week Of	Activity
	Draft advertisement
	Complete Request for Action on Vacancy and Notification of Intent to Fill sections of Position Request Form and obtain required signatures
	Place advertisement with media
	Appoint Search Committee and Chair
	Initial Meeting of Search Committee <ul style="list-style-type: none"> • Search committee begins screening credentials of candidates based on criteria listed in the job ad
	Continue credential review
	Meeting of Search Committee <ul style="list-style-type: none"> • Select candidates for on-list reference checks • Assign teams of two committee members or more to conduct reference checks • Schedule telephone reference checks
	Conduct reference checks
	Meeting of Search Committee <ul style="list-style-type: none"> • Select candidates for phone interviews
	Complete Pre-Interview section of Position Request Form and obtain required signatures
	Meeting of Search Committee <ul style="list-style-type: none"> • Select candidates for campus interviews • Inform selected candidates that Committee will be conducting off-list reference checks • Develop itinerary and schedule for campus interviews
	Conduct off-list reference checks
	Meeting of Search Committee <ul style="list-style-type: none"> • Finalize candidates selected for campus interviews
	Campus interviews with finalist candidates
	Meeting of Search Committee <ul style="list-style-type: none"> • Finalize recommendations
	Complete Appointment Recommendation section of Position Request Form and obtain required signatures

Adapted from Christopher D. Lee, PhD, *Search Committees: A Tool Kit for Human Resource Professionals, Administrators, and Committee Members* (CUPA 2000).

APPENDIX E

Sample Applicant Acknowledgment Letter with Compliance Form Language

[Date]

Title & Full Name
Address
City, State, & Zip Code

Dear Title & Last Name

Thank you for your letter indicating your interest in the position of [position title] at Eastern Kentucky University, the copy of your resume, and the list of persons willing to serve as references for you. On behalf of [search committee or hiring authority], I want to express my appreciation for your willingness to be considered as a candidate. [Add statement requesting additional material, if needed]

[So that you may know more about this opportunity, I am enclosing a brief profile of the University and [department]. You may wish to access our web site at www.eku.edu.]

Also, enclosed for your voluntary completion is an Affirmative Action Compliance Program Information Form. The University's Equal Opportunity Office uses this form to gather pertinent data regarding applicant background (i.e. gender, race, and ethnic identity) for equal opportunity and affirmative action purposes related to the University's Affirmative Action compliance program. Although completion of the form is voluntary, the information you provide is important to maintaining equal opportunity and affirmative action efforts at Eastern Kentucky University. The Equal Opportunity Office will keep all information you provide confidential and separate from your application and all other data. A postage-paid business reply envelope is enclosed for your use in returning this form.

[The Committee or hiring authority] will review resumes and related materials over the next [few weeks] to identify a small group of candidates whose expertise and commitments appear to be most closely related to our needs. I will keep you apprised of the status of your candidacy as this search proceeds. Again, thank you for your interest in Eastern Kentucky University.

Sincerely,

APPENDIX F

Sample Letter to Persons Whose Names Have Been Submitted for a Search

[Date]

Title & Full Name
Address
City, State, & Zip Code

Dear Title & Last Name:

Eastern Kentucky University is conducting a search for a [position title]. Your name has been submitted as someone who may have an interest in applying for the position. The purpose of this letter is to inquire about your interest in this position. To help you decide whether to explore this possibility, I am enclosing a copy of the position announcement. You may also wish to access our web site at www.eku.edu.

[The Search Committee or hiring authority] is in the process of identifying a small group of candidates whose expertise and commitments appear to be most closely related to the needs of [department] and the University. If you are interested in being considered, we ask that you send a letter outlining your interest and qualifications, a copy of your resume, and the names, addresses and telephone numbers of at least five persons who are willing to serve as references for you.

If your qualifications and credentials satisfy the requirements of the position and you are interested in being considered for the position, we look forward to hearing from you.

Sincerely,

APPENDIX G

***Sample Letter to Applicants Who Do Not Meet Minimum Position
Requirements***

[Date]

Title & Full Name
Address
City, State, & Zip Code

Dear Title & Last Name:

Thank you for your letter indicating your interest in the [department] at Eastern Kentucky University, the copy of your resume, and the list of persons willing to serve as references for you [include additional application materials here]. On behalf of the Search Committee, I want to express my appreciation for your submitting resume for consideration for the position of [position title].

We have screened the credentials of those individuals submitting resumes in response to our initial announcement. According to your resume, your credentials do not meet our requirement of [the requirement] as stated in the University's announcement of the position, a copy of which is included for your reference. We thank you for your interest in Eastern Kentucky University, the thought you have given to its needs and the privilege of screening your credentials. On behalf of the Search Committee, I convey our best wishes for your continued professional success.

Sincerely,

APPENDIX H

Sample Letter to Applicant Who Are Not Selected As Finalists

[Date]

Title & Full Name
Address
City, State, & Zip Code

Dear Title & Last Name:

The [position title] Search Committee of Eastern Kentucky University has reviewed the credentials of a large number of candidates in order to select a smaller number of people for further consideration. Because of the outstanding quality of the candidates, this task has been difficult. Not only have we been trying to assess certain qualities from resumes, we have been attempting to judge those qualities in reference to the particular needs of [department] of the University at this point in its history.

While you are not among the candidates whose strengths appear to fit our current needs most closely, we thank you for your interest in Eastern Kentucky University, the thought you have given to its needs, and the privilege of reviewing your credentials. On behalf of the Search Committee, I convey our best wishes for your continued professional success.

Sincerely,

APPENDIX I

CONDUCTING INTERVIEWS

First and foremost keep in mind the goals of the interview process:

- Gather job related information
- Create a positive image of the institution
- Present a realistic description of the position
- Ensure that all applicants feel they have been treated fairly
- Establish adequate records in the event the hiring decision must be justified at some future date

Steps in the interview process:

- Establish a rapport with the applicant
- Explain purpose and set agenda (let the applicant know what is to occur)
- Gather predictive information

Be knowledgeable of legal considerations:

Questions related to gender, age, color, race, religion, national origin, disability, sexual orientation, and veteran status are inappropriate during interviews. Treat all applicants in the same manner. The following are areas where questions can and have been used in a discriminatory way. Remember that discriminatory behavior is improper, even when it is not intended.

Accent

A hiring decision cannot be based on foreign appearance or manner of speaking. The only permissible consideration of accent is where there is a clear correlation between job performance and the ability to speak English clearly.

Age

Persons age 40 and over are protected from discrimination on the basis of age. Questions that would reveal age, such as year of graduation, should be avoided unless there is a need to construct a chronology of work or educational experience. Additionally, comments such as the need to hire "new blood" or concern about "dead wood" should not be made as they can be used to imply a bias against older workers. The protection against discrimination also applies within the protected age group, meaning that it is unlawful to prefer a 42-year old applicant to a 50-year-old applicant because of age.

Citizenship

Prior to making an offer, the only discussion about citizenship status that may lawfully occur is whether the applicant is currently eligible to

work in the United States. If such a question is asked of one applicant, it should be asked of all. Following the offer stage, the successful applicant will be required to produce documentation of eligibility.

Disability

The Americans with Disabilities Act (ADA) prohibits employment discrimination against qualified individuals with disabilities, as well as persons who have a record of disability or are perceived as disabled. The protection extends to all aspects of the hiring process and all other employment related activities. Further guidance on this issue is available on the attached.

Marital and Family Status

Questions that could elicit personal information about applicants' marital status or childcare arrangements should be avoided. Employers can ask if applicants are able to work the hours required by the job, or undertake job-related travel, as well as about the duration of any anticipated absences. All applicants should be treated equally. Applicants themselves may ask about the University's leave policies and benefits. If these questions arise, the applicant should be referred to Human Resources.

Military Record

Applicants can be asked questions about their military experience, qualifications, or training if they relate to the actual requirements of the position. Questions concerning military service should focus on relevant job skills. Questions that elicit information about applicants' discharge status should be avoided unless a business necessity for requesting this information can be established, and if asked, should be asked of all applicants.

National Origin

Applicants are protected from discrimination based on their national origin. Questions related to an applicants' national origin, such as their birthplace, ancestry, or origin of name, should be avoided.

Personal Appearance

Except in cases of safety or other work-related matters, employees may wear clothing that is symbolic of their race, national origin, or religion, and questions should not be asked about such matters.

Pregnancy

A female applicant who is pregnant is protected from discrimination because of her pregnancy, childbirth, and related medical conditions, and should be evaluated solely on her ability to perform the requirements of the position. If an

applicant wants to know about EKU's policies, she should be referred to Human Resources.

Race and Ethnicity

Applicants should not be asked questions regarding their race or ethnic background during the interview.

References

Many search committees limit reference checks to the top applicants in the final interview pool. Regardless of when a reference check is made, consistent questions should be asked of the references. In the course of a reference check, unsolicited information that is inappropriate or discriminatory may be provided by the reference. Such information should be ignored. A good rule is not to discuss anything with references that could not be discussed with the applicants themselves

Religion

Applicants are protected from discrimination because of their religious denomination, beliefs, customs, or religious holidays observed. Questions that could elicit religious information should be avoided unless they have a clear correlation to need, such as working on Saturdays or Sundays, or peak periods. If asked, the question should be limited to stating the requirements of the position, and should be asked of all applicants.

Sex (Gender)

Applicants may be asked to identify whether they are male or female. In addition, it is permissible to ask what title of address is preferred, provided the inquiry is made for a nondiscriminatory purpose.

Sexual Orientation

Eastern Kentucky University's Non-Discrimination Policy prohibits discrimination based on a person's sexual orientation. Questions and discussions pertaining to sexual orientation should be avoided.

Sick Leave

Questions that elicit information about how many days an applicant was sick or other questions pertaining to sick leave should be avoided. If there are job-related concerns about coverage during peak times of need or dependability, stating the expectations and asking applicants if they can meet them are permissible. If asked of one, such questions should be asked of all.

Workers' Compensation

Questions that elicit information about an applicant's workers' compensation history should be avoided. The same concerns as mentioned for sick leave apply to this area of inquiry.

Adapted from Interview Guide for Supervisors, College and University Personnel Association, 5th Edition, 1998.

Adapted from ADA Enforcement Guidance: Reemployment Disability-Related Questions and Medical Examinations, U.S. Equal Employment Opportunity Commission, Washington, D.C. 20507, October, 1995.

Adapted from Conducting the Lawful Employment Interview: How to Avoid Charges of Discrimination When Interviewing Job applicants, Alan M. Koral, Executive Enterprises Publications Co., Inc., 1993

Adapted from UVA EOP Guide.

APPENDIX J

*I-9 Guidelines and the Recruiting Process*⁵

The I-9 process is designed to require employers to verify the identity and work eligibility of individuals who present themselves for employment. At the same time, the form is designed to prevent unnecessary or discriminatory inquiry into the employee's nationality. As with many employment issues, it is critical for employers to be familiar with the rules and requirements of the I-9 process in order to avoid expensive litigation and possible fines.

There are generally three instances where I-9 and immigration issues arise in a hiring of foreign professionals:

- **Recruitment:** What questions can you ask regarding nationality and visa status; what questions can you absolutely **not** ask.
- **Job Offer:** What visa must be obtained? Prior to making a job offer to a foreign professional, please contact Virginia Underwood, Equal Opportunity Office, to obtain guidance in this area.
- **Hiring Stage:** I-9 process. Human Resources will handle this process during new employee orientation.

Each of these phases has its own rules. This material covers only the recruitment stage. For the job offer stage, please contact the University's Equal Opportunity Office at 622-8020.

Recruiting Inquiries

"You must treat all job applicants and employees equally-whether they are U.S. citizens or non-citizens. **Citizenship status discrimination** refers to unequal treatment because of citizenship or immigration status. **National origin discrimination** refers to unequal treatment because of nationality, which includes place of birth, appearance, accent, and can include language."

The EEOC has adopted Guidelines on Discrimination Because of National Origin that contain the following statement: "Because discrimination on the basis of citizenship has the effect of discrimination on the basis of national origin, a lawfully immigrated alien who is domiciled or residing in this country may not be discriminated against on the basis of citizenship; except pursuant to national security requirements by a federal statute or executive order." Employers are, however, authorized to ask about employment eligibility. An employer is required under IRCA (Immigration Reform and Control Act 1986) to verify employment eligibility of all employees.

⁵ This information is based upon and taken from Eliot Norman and Helen L. Konrad, "U.S. Immigration law handbook (University)", (McCandish Holton, Richmond, VA, 2002), and Kristine L. Kaplan, "Working with Faculty Search Committees", (NACUA 2002). "Look at the Facts Not at the Faces, Your Guide to Fair Employment", U.S. Department of Justice, civil Rights Division, Office of Special Counsel for Immigration-Related Unfair Employment Practices.
Equal Opportunity Office
Eastern Kentucky University

Updated May 2004

Please note that the following "can" questions, if asked, should be asked of everyone, not just "foreign-looking" or "foreign-sounding" candidates.

Can Ask During Recruiting Stage

- Ask if an applicant is "currently authorized to work in the United States on a full-time basis for any employer."
- If the applicant answers "yes," you may then ask "will you require now or in the near future employment visa sponsorship (i.e., H-1B visa)."
- You MAY state that, if hired, applicant must furnish proof of employment eligibility sufficient to satisfy I-9 requirements.
- If the applicant answers "no" to your original question whether they are currently authorized to work in the United States on a full-time basis, you may ask what their current immigration status is.
- You MAY assess all candidates regarding ability to communicate sufficient for job and proficiency in English, provided job-related.

Cannot Ask During Recruiting Stage

- Ask how the person obtained citizenship.
- Ask if the person is a permanent resident alien (i.e., green card holder).
- Ask what kind of work authorization the person has.
- Ask what a person's employment eligibility is based on.
- Ask to see the green card.
- Ask what the person's visa status is.
- Ask what the person's home country is.
- Ask when their work authorization expires.
- Ask if the applicant has "unlimited work authorization" or work authorization for an "indefinite period of time."
- Under IRCA employers cannot reject "protected individuals" because of time limited employment eligibility, even if the remaining eligibility is short. For example, asylees, refugees, and temporary resident aliens or applicants for temporary residents may have work authorization that is only valid for six to

eighteen months from the time that it is obtained. However, all of these people are able to obtain automatic extensions of work authorization and are, protected under IRCA as "intending citizens" of the United States. Thus, the better practice is never even to inquire as to the remaining time left on work authorization, since it is not relevant at the recruiting or interview stage.

- Ask what the person's native language is.
- Ask how the person acquired the ability to read, write or speak in that language.
- Ask if the person intends to become a citizen of the United States.
- Ask if the person intends to remain permanently in the United States.
- Ask about the national origin of other members of applicant's family.
- Ask questions regarding place of birth, "where originally from," native language, etc.
- Note: Persons who would need an employer to petition to obtain an H-1B visa or a green card are not "protected individuals" under IRCA. Therefore, the employer is free to provide this service or not provide this service. However, the employer should not have a policy that has a disproportionate impact on employees of certain national origins. In other words, you may not apply for green cards only for nationals of certain countries and not nationals of other countries.