

**SAAA Annual Meeting 2014**

***APPROACHES TO MINIMIZE GETTING SUED LATER***

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***TERMINATING/CONTRACT NON-RENEWAL***

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DISCLOSURE: I have no financial relationships with industry to disclose.

***APPROACHES TO MINIMIZE GETTING SUED LATER - TERMINATING/CONTRACT NON-RENEWAL***

At the conclusion of the presentation, the attendee will be able to:

- Distinguish the difference between Terminating a Contract and Contract Non-Renewal.
- Prioritize documentation of all interactions and recommendations preceding termination or non-renewal.
- Recognize the importance of early utilization of legal and administration resources.

## Citations for Dr. Apfelbaum

Mary Ann Connell, Frederick G Savage, *The Role of Collegiality in Higher Education, Promotion, and Tenure Decisions*, J. Coll. Univ. L. 27, 833, (Spring 2001).

Ann H. Franke, *Faculty Misconduct, Discipline, and Dismissal* (presented at the CLE conference of the National Association of College and University Attorneys, March 22, 2002) available at [www.nacua.org](http://www.nacua.org)

Robert M. O'Neil, *Alternatives to Tenure*, J. Coll. Univ. L. 27, 573 (Winter 2001).

Stephen J. Hirschfeld, *Faculty Behaving Badly: How To Effectively Address Faculty Misconduct*, (presented at the CLE conference of the National Association of College and University Attorneys, March 17, 2010) available at [www.nacua.org](http://www.nacua.org)

Patrick T. O'Rourke, Theodora Lee, *Taking a Faculty Academic Misconduct Case to a Jury Trial*, (presented at the CLE conference of the National Association of College and University Attorneys, March 17, 2010) available at [www.nacua.org](http://www.nacua.org)

Donna R. Euben, Barbara A. Lee, *Faculty Discipline: Legal and Policy Issues in Dealing with Faculty Misconduct*, J. Coll. Univ. L. 32, 241, (2005-2006).

# SAFE HIRING

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No conflict of interest

## LEARNING OBJECTIVES

- Describe Equal Employment Opportunity Commission (EEOC) regulations designed to prevent discrimination against “protected classes”
- Formulate legal interview questions in the inquiry area of citizenship, age family status, affiliations and disabilities
- Effectively guide a search committee to evaluate candidates based on Bona Fide Occupational Qualifications (BFOQs)

## ASPECTS OF PERSONNEL DECISIONS

- HIRING:
  - ADVERTISING
  - RECRUITING
  - INTERVIEWING
- MANAGEMENT
- DIVERSITY

## WHAT YOU CAN DO, WHAT YOU CANNOT DO

- What are the limits of your rights as an employer?
- To what extent do laws grant rights to employees?
- How are personnel decisions constrained by legal requirements?
- What can you do to protect your organization (self) from lawsuits?

## STATISTICS



- Lawsuits alleging discrimination in the workplace more than tripled in the 1990s from 9,936 to 21,540
- In 2013 - lawsuits alleging discrimination in the workplace – **93,646**
- Montana – 18
- Texas - 9068

## KEY TERMS



- **PROTECTED CLASS** – a group of people distinguished by special characteristics that has inhibited progress
- **BFOQ** – Bona Fide Occupational Qualifications a trait that is integral or essential to the job in question
- **Discrimination** – decisions and actions that deny individuals in protected groups access to employment, advancement, compensation permitted to other people

## KEY PLAYERS





1. Civil Rights Law of 1866
2. Title VII of the Civil Rights Act of 1964
3. Executive order 11,246
4. Age Discrimination in Employment Act
5. Rehabilitation Act of 1973
6. Americans With Disabilities Act of 1990
7. Veterans Readjustment Assistance Act of 1974
8. Uniformed Services Employment and Reemployment Rights Act of 1994



## Equal Employment Opportunity Commission

- Enforces Federal Laws prohibiting employment (employees and job applicants) discrimination
- Unfair treatment because of **race, color, religion, sex, national origin, disability, and genetic information**
- Harassment
- Retaliation



## OUR REALITY

- *You are appointed* Chair of the Search Committee to identify the next Chair of Obstetrics and Gynecology
- Ten members of constituent groups have been appointed to the Committee
- Safe recruiting and interviewing practices **require** that the committee members **KNOW THE LAW**

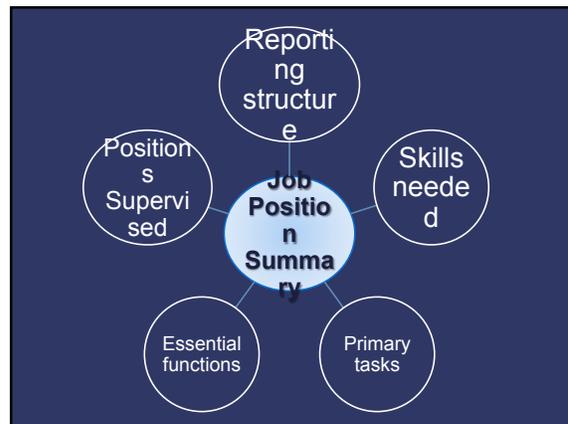


### ADVERTISEMENT – WHAT YOU **CANNOT** SAY

- Specific age limits
- Sex characteristics
- Racial Characteristics
- National origin
- Religious preference
- Physical Characteristics
- Geographic Areas

### ADVERTISEMENT – WHAT YOU **CAN** SAY

- All qualifications or characteristics must be job related – **BFOQs**
- Clearly worded JOB description
- Specific applicant qualifications or characteristics essential to performing the job properly



Back to the reality of the search for a chair of OBGYN

A photograph showing five black office chairs arranged in a row on a wooden floor, facing a green wall. The chairs are positioned in a semi-circle, suggesting a meeting or a search process.

### Job Position Summary for the Chair of OBGYN Reporting Structure

- Reports to the Medical School Dean, & Hospital CEO
- Direct Reports - Vice Chair, Division Chiefs, Program Director, Administrator
- Key relationships – Other Chairs, Executive Dean, Vice Deans, Executive VP and COO, CMO

### Job Position Summary: Skills and Tasks

- Visionary leadership to ensure ethical educational, scientific and clinical programs
  - Research Strategy for success
  - Tactical plan to achieve superior clinical programs
  - Methods to assure excellent clinical education and training
- Budgetary Experience
- Capacity to recruit, hire retain faculty

### Job Position Summary: Ideal Prior Experience

- Personal academic accomplishments
- Successful research productivity
- Successful administrative and leadership experience
- Demonstrated capacity to build and sustain collegial relationships
- Managerial and business acumen
- MD and board certification

### Interviewing Do's and Don'ts



#### Do's

- Work history
- Educational Background
- Personal information that could effect job performance
- Scripted interview – job related questions asked of every applicant

#### Don'ts

- Questions regarding protected characteristics are unacceptable
  - DOB
  - Arrest Records
  - Religious or other group membership
  - Marital status, family plans
  - Disabilities
  - Discharge from military

### How to Ask the Right Questions

### Navigating the “Don'ts” Legally

- Origin – Are you authorized to work in the U.S.
- Age - Are you over the age of 18
- Marital Status – Are you willing to relocate
- Affiliations – List any professional groups you belong to relevant to your ability to perform this job
- Disabilities – Are you able to perform the functions of this job

## The Scripted Interview



- Proudest accomplishment
- How have you mentored, developed faculty?
- How have you built your program? Were there barriers?
- How have you fostered diversity in your present environment?
- How have you balanced research, education and clinical work?
- Describe key collegial relationships

## What we Can do....

- **Take care not to discriminate; avoid even the appearance of discrimination**
- **Base decisions that take into account protected characteristics on BFOQs**
- **Consider reasonable accommodations when dealing with personal situations**

## References

- Hochel, S. and Wilson, C.E. (2007). Hiring Right, Conducting Successful Searches in Higher Education
- Weiss, D.H. (2004). Fair Square and Legal