

Hiring the Best While Developing Diversity in the Workforce: Legal Requirements and Best Practices for Screening Committees

Ventura County Community College District | April 8, 2022

Presented by: Jenny Denny

LCW LIEBERT CASSIDY WHITMORE

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Presented By:

Jenny Denny / April 8, 2022

AGENDA

- **Mandatory training requirements:**
 1. Law & regulations regarding nondiscrimination
 2. The educational benefits of workforce diversity
 3. The elimination of bias in hiring decisions
 4. Best practices for selection/screening committees
- **Crafting questions that get the information you seek**

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Equal Employment Opportunity Plan Requirements

What training is required?

- All of the following:
 - Law & regulations regarding nondiscrimination
 - The educational benefits of workforce diversity
 - The elimination of bias in hiring decisions
 - Best practices for selection/screening committees
- No time or frequency requirements

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Nondiscrimination in Employment: Law & Regulations



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Federal/State Anti-Discrimination Laws

- **Overview:**

- Prohibition against employment discrimination isn't new
- What constitutes unlawful discrimination has changed

BUT

- *Expectations have not changed*

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Federal/State Anti-Discrimination Laws

- Title VII of the Civil Rights Act of 1964
- Title IX of the Education Amendments of 1974
- Americans with Disabilities Act (ADA)
- Age Discrimination in Employment Act (ADEA)
- Fair Employment and Housing Act (FEHA)

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Federal/State Anti-Discrimination Laws

• Employment Discrimination Includes:

- Refusal to hire*
- Rejection from training program
- Discharge from employment/training program
- Any decision affecting compensation, terms, conditions, privileges

(*If based on a protected status)

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Federal/State Anti-Discrimination Laws

• No Discrimination on Basis of:

- Sex/Gender (including gender identity/gender expression)
- Genetic Information
- Race
- National Origin
- Hair texture/hairstyles associated w/particular race/national origin
- Religious Creed
- Color
- Ancestry
- Physical/Mental Disability, Medical Condition
- Marital Status
- Age
- Sexual Orientation
- Military and Veteran Status

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Equal Employment Opportunity In California

Proposition 209 (Cal. Const. Art. 1, Sec. 31)*

- Prohibits “preferential treatment” on basis of:
 - Race
 - Sex
 - Color
 - Ethnicity
 - National Origin
- In Public:
 - Employment
 - Education
 - Contracting

Equal Employment Opportunity In California

Prop 209: Legislative Response

- Funding contingent on:

“Each district employer **shall** commit to sustained action to devise recruiting, training and advancement opportunities that will result in equal employment opportunities . . .”*

* EC 87101(c)

Equal Employment Opportunity In California

• Title 5 Regulations:

- Require EEO Plans & multiple measures to promote equity & diversity.*
- Require districts to take steps to eliminate underrepresentation based on protected status.**

*Section 51010, *et seq.*

**Section 53006

Title 5 regulations amended are pending final approval by the Department of Finance.

The Hiring Challenge

3 Principles for Lawful EEO Hiring:

1. Protected status of candidates is *never* a factor
2. Infusing a commitment to diversity & equity into the hiring process **does not** involve lowering standards
3. Infusing a commitment to diversity & equity into the hiring process **does** involve assessing candidates against job-related criteria that:
 - Eliminate irrational barriers
 - *Beware the false predictors of performance*
 - Expand and update “job related” criteria
 - *Be curious*

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The Educational Benefits Of Workforce Diversity



It's Not Just The Law...

Why Does Diversity Matter to CCDs?



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It's Not Just The Law...

Core Mission:

- Serve California's diverse community of learners
- Prepare all students for success in a global society

Longstanding Expectation:

- Identify and address underrepresentation in the workforce

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Equal Employment Opportunity in California

- Academic & administrative applicants must demonstrate:
“sensitivity to and understanding of the diverse academic, socioeconomic, cultural, and ethnic backgrounds of community college students.”*

***EC 87360**

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Elimination Of Bias In Decision Making: Why We Need “Interrupters”



What is Unconscious Bias?

- **We evolved to be biased**
 - Humans’ “fast brain” helped us survive
 - Our “danger detector” is unconscious and hard-wired
- **But....**
 - We use this “fast brain” to reach all sorts of conclusions it isn’t equipped to make
 - And we do it all the time



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What is Unconscious Bias?

I'm okay; you're biased

- People underestimate the influence that self-interest has on their own judgments
- People overestimate the influence that self-interest has on other people's judgments

What is Unconscious Bias?

• Unconscious bias in the hiring context:

▪ Confirmation bias

- The tendency to hear information in a manner that confirms what we already believe

▪ Affinity bias

- The tendency to prefer those that remind us of ourselves

What is Unconscious Bias?

- **Unconscious bias in the hiring context (con't):**

- **Availability heuristic**

- You tend to trust your own experience and knowledge even if these go against new information that is presented

- **Beauty bias**

- If we perceive someone to be attractive, we tend to give them the benefit of the doubt, trust them, etc.

- **Anchoring**

- The tendency to rely heavily on one piece of information when making decisions



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What is Unconscious Bias?

- **Unconscious bias in the hiring context (con't):**

- **Bandwagon effect**

- The tendency to do (or believe) things because many other people do (or believe) the same thing

- **Negativity effect**

- The tendency to allow things that are negative to have a more significant effect than things that are positive or neutral



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Addressing Unconscious Bias: Beware the “Good Fit” Myths

Myth #1:

Whether a candidate resonates with me on a personal level provides a reliable predictor of whether the candidate will do a good job.

Myth #2:

How someone performs in an interview setting provides a reliable predictor of how that person will interact with me in the work setting.

Addressing Unconscious Bias

At the personal level:

- Continually monitor your reaction to the candidates
- Ask yourself:
 - What is the basis for my positive/negative reaction?
 - Is my reaction grounded in the content of the candidate’s performance?
 - Am I reacting to what this [question/exercise] was intended to measure?
 - Is my reaction disproportionate to the response?
 - Is my reaction consistent with my reaction to similar responses from other candidates?

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Addressing Unconscious Bias

At the structural level:

- Consider as a committee whether there are decision points where bias can be “interrupted”

Examples:

- Do you need to know the names of candidates at the screening stage?
- What would happen if you did not?

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Strategies For “Interrupting” Unconscious Bias

- Remove identifying information (name, address, racial/cultural identifiers) from applications
- Identify desirable interview answers ahead of the interview
- Utilize a structured hiring process
- Utilize skill based testing where applicable
- Conduct anonymous/blind interviews

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Hiring Committee Best Practices for Promoting Equity & Diversity



Role of Selection Committees

- Identify the most qualified candidates to recommend forward to next level
- Using a process that is
 - Objective
 - Job-related
 - Curious



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Committee Process — Roles & Responsibilities

- Review job announcement/job description
 - **This is your touchstone!**
- Develop forms and procedures
 - Paper screening criteria/process to select interviewees
 - Interview questions
 - Demonstration component (if applicable)
 - Rating form/process
 - Model answers

Practice tip: Make sure you are rating what you intend the question to measure



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Phase 1: Who gets interviewed? Screening The MQ Applicants

- **Who gets the interview?**
 - Critically important step
 - Where diversity of pool often dwindles
 - Important at this phase:
 - Written application questions
 - Focus on currency of knowledge
 - Assess global knowledge (if job related)
 - *Initial* sensitivity to diversity review
 - Rating criteria



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Screening Applications

What do you think?

A screening committee for a math instructor position institutes this screening step: eliminate all applications with spelling or grammatical errors.

Screening Applications

Assuming the job announcement includes “doctorate preferred” how can the hiring committee protect against liability in this scenario?

A screening committee is hiring a new instructor in the early childhood development program. The job announcement includes: “Doctorate preferred.” A Hispanic male with a masters, who has an impressive work history and excellent application, gets an interview. He gets high marks in the interview and ultimately is hired. A white female with a doctorate sues.

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Committee Process — Best Practices

- **Protect integrity and credibility of process**
 - Assess all candidates using same criteria
 - Don't bring in "outside knowledge"
 - Reference checks shouldn't be a committee function because:
 - Occurs after finalist selected...and only for finalist
 - Requires particular expertise
 - Committee may provide content expertise in fashioning reference check
 - Maintain confidentiality!

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Screening Process — Best Practices

- Neutral
- Objective
- Meaningful consideration of "sensitivity to diversity"
- Job-related criteria only
- Do it right the first time!
- Monitor processes

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Screening Process — Best Practices

- **Collaborate with Human Resources throughout process**
 - Title 5 compliance
 - Anti-discrimination laws and rules
 - Elimination of bias

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The Interview—Best Practices

- Robust content ... but it's not a gauntlet..
 - Be transparent: Use introductions to explain process
 - Provide questions in writing as well as orally
 - Avoid questions with subparts!
 - Helps committees prioritize & elicit what candidates know
 - Consider using a “soft” opening question that is not rated
- Create opportunity for candidates to shine
- Remember you are being interviewed

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The Interview—Best Practices

Rating form for interview:

- Rate each question and response individually
 - Ideally based on “model answer”
- Base rating only on what the question was intended to measure
- Anything committee intends to rate during the interview should be
 - Job related
 - Reasonably predictive of performance
 - Included on rating form

Problems in the Interview Room

What would you do in the following?

A candidate has a heavy accent. After the interview, the committee discusses the ratings. One member states, “I had to rate him low because I couldn’t understand his answers.”

Problems in the Interview Room

How would you handle the following?

You are on a screening committee for a new DSP&S counselor. Another committee member has an apparent disability. During one interview, the candidate would not look at the member with a disability, even if she asked the question.

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Crafting Questions



Asking Questions: The Basics

Use your time wisely- don't use interview for matters better handled through other parts of the selection process

- Does candidate meet minimum qualifications?
 - Review documentation
- Does the candidate possess any of the preferred qualifications?
 - Answers to written questions
- Does candidate have an engaging teaching style?
 - Demonstration
- Does the candidate work well with others?
 - Reference check
- Does the candidate have deep knowledge in their field?
 - Response to interview questions

Making the Most of the Interview

Developing appropriate *and useful* questions

1. Look at the job description:

What do you want the successful candidate to do?

- What courses must candidate be qualified to teach?
- What students will candidate serve?
- What professional activities will candidate engage in?
- What current knowledge skills and abilities are relevant to the position?

Making the Most of the Interview

Developing appropriate *and useful* questions

2. Plan the interview:

- What are the *critical* job functions, knowledge, skills & abilities that you want to make sure to cover in an interview?
- How much can you realistically cover?

Remember: Using your time wisely includes NOT spending time covering areas that the interview format isn't well designed to evaluate.

Making the Most of the Interview

Developing appropriate *and useful* questions

3. Craft questions consistent with critical areas identified

- For each question:
 - FIRST decide which critical area(s) the specific question is intended to measure
 - THEN, craft the question

Making the Most of the Interview

Developing appropriate *and useful* questions

3. Craft Questions (con't):

- Give meaningful consideration to candidates' "sensitivity to diversity" by assessing multiple ways, such as:
 - Question(s) specific to this criterion
 - As a rating sub-component of questions
 - Professional, collegial engagement with the committee
- Give candidates opportunity to highlight job-related KSAs that:
 - Reflect current/recent developments in the field
 - Show a global perspective



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Making the Most of the Interview

Developing appropriate *and useful* questions

3. Craft Questions (con't):

- No questions—direct or indirect—about protected status
- Example: May you ask?
 - "I don't see when you graduated on your resume, when did you graduate?"
- Assuming a legitimate, job related concern, what could you ask?



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Making the Most of the Interview

- Use different question formats for different purposes
 - **Open-ended** →
 - to understand candidate's depth of knowledge, skills & abilities
 - **Hypothetical** →
 - for creativity & problem-solving
 - **Hypothetical/experience-based hybrid** →
 - for creativity/problem-solving, while assessing experience of seasoned candidates
- Plan ahead how committee will evaluate answers
- As a committee, outline the components of an excellent answer

Making the Most of the Interview

Infuse diversity commitment into hiring process by conducting meaningful inquiry into candidates' sensitivity to diversity

--Exercise: The Hypothetical Question--

Develop 1 question for position of your choice that:

- Assesses the candidate's sensitivity to the diversity of community college students; and
- Gives you insight into the candidates (job related) creativity and/or problem-solving skills

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Thank you!

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