

## **Legal Aspects of Hiring**

*This digest of policies and laws has been developed and provided by the Human Resources Office and the College Counsel.*

### **College Policies:**

#### **1. Equal Employment Opportunity Policy**

Siena College is an equal employment opportunity employer and does not discriminate against employees or job applicants on the basis of race, religion, color, sex, age, national and ethnic origin, disability, marital status, veteran status, sexual orientation, or any other status or condition protected by applicable federal or state statutes, except where a bona fide occupational qualification applies.

#### **2. Diversity Initiative**

Siena College is committed to fostering a diverse environment. This definition of diversity is inclusive of all academic perspectives and all ethnic/racial/national origins, religious, gender, sexual orientation, persons with disabilities, and socioeconomic backgrounds. In our hiring practices, it is an objective of the College to increase the presence of members of historically underrepresented groups within our faculty while insuring that all candidates are otherwise qualified. We seek faculty who will diversify our curriculum and academic environment by bringing perspectives/materials of underrepresented groups and new pedagogical methodologies into our classrooms, and finally, faculty who specialize in such issues within their scholarship.

As the department defines its search, formulates its strategies for hiring, and chooses candidates, it should consider these questions as to our diversity objective: What will strengthen the diversity of faculty within the department, and what will augment the diversity of cultural perspectives represented by the courses and curriculum offered by this department? And, how will this hire also allow the department to contribute to the diversity of the college as a whole while maintaining balance with specific department or class requirements?

The College will also begin tracking and reporting applicant data pursuant to a formal Affirmative Action Program.

#### **3. Employment of Foreign Nationals**

The College will sponsor and prepare petitions with the U.S. Citizenship and Immigration Services Bureau of the Department of Homeland Security (“USCIS”) for foreign nationals to obtain H-1B status in the United States, which will allow them to work at the College for a specified period of time. The Office of the College Counsel will coordinate these petitions, along with petitions needed for the foreign national’s family members.

The College will pay for all filing fees and applicable legal fees except those relating to the foreign national's family members' petitions.

The College will also sponsor eligible foreign nationals in their petitions for permanent residency. Please note that not all employees will be considered eligible for sponsorship. Whether an employee is eligible for sponsorship will be determined by the Vice President overseeing the area in which the employee works. The Office of the College Counsel will not prepare these petitions, but will maintain a list of qualified attorneys, who can assist the individual foreign national. All legal fees and other related costs in filing a petition for permanent residency, except for those relating to the required labor certification, will be borne by the foreign national. The College will pay for all costs and fees, including legal fees, related to the required labor certification application, which is filed with the Department of Labor.

All foreign nationals who do not have permanent residency status at the time of their initial appointment should contact the Office of the College Counsel soon after receiving their appointment letters to ensure they receive the necessary employment authorization from USCIS prior to their actual employment at the College. In addition, faculty members with classroom teaching duties should contact the Office of College Counsel within 12 months of being **offered** the position to make certain that there is sufficient time to prepare and file a labor certification case, should they be eligible for sponsorship.

Practical Consideration: The U.S. Department of Labor requires a print ad as part of the labor certification process; therefore, all advertisements must be placed in a hard-copy publication. This issue is being reviewed right now at the federal level, so the procedure may change next year.

#### **4. Employment of Relatives**

In order to avoid the potential for perceptions of favoritism, the College prohibits the hiring of relatives within the same department.

#### **5. Internal Appointment/Promotions**

The College encourages current employees to apply for positions at the College in which they have an interest and for which they are qualified.

#### **Employment Laws:**

It is important that all employment activities at the College be conducted in accordance with federal and state employment laws. These laws were established to ensure that employers use only selection criteria that are job-related and that may be used to assess an applicant's ability to successfully perform the functions of a position. An employment process that utilizes criteria or measures that are not job-related (e.g., sex, age, race, religion) is discriminatory.

## A. Federal Laws

1. Age Discrimination in Employment Act of 1967 (ADEA) The ADEA prohibits age discrimination against individuals aged 40 and older. It is, therefore, illegal to fail or refuse to hire any individual because he or she is age 40 or older, or to discriminate on the basis of age against applicants within the protected age group (40 and older).

Inquiries regarding an applicant's age or date of birth, as well as any proof of age requirements should be avoided as they may be viewed as being discriminatory.

2. Americans with Disabilities Act of 1990 (ADA) The ADA prohibits discrimination against a "qualified individual with a disability" in regard to all aspects of the employment relationship including the hiring process. It is, therefore, illegal to discriminate against an individual who satisfies the requisite skill, experience, education and other job-related requirements of a position, and who, with or without reasonable accommodation (which in many cases must be provided by the employer), can perform the essential (critical or fundamental) functions of the job. **This is why it is critical to establish the critical functions of the job before beginning the search process.**

General questions about whether an applicant is disabled or about the nature or severity of his/her disability must be avoided. Selection criteria that require mental or physical capabilities must be job-related and consistent with business (educational) necessity.

Modifications or adjustments to the job application process to enable a qualified applicant with a disability to be considered for a position must be provided. Adjustments to the work environment, (e.g., job restructuring, modifying equipment, and making facilities accessible), that do not create an "undue hardship" must also be provided by employers.

3. Civil Rights Act of 1964 and 1991 (Title VII)

Title VII prohibits discrimination in employment on the basis of race, color, religion, sex, or national origin.

Advertisements, policies, or practices that place limitations in any of these areas, as well as any preemployment inquiries into any of these areas that are not based on a bona fide occupational qualification must be avoided. Examples of the types of inquiries or restrictions that must be avoided are:

\*Inquiries about an applicant's name, foreign address, or birthplace that would indicate lineage or national origin.

\*Restricting employment based on sex because certain jobs are traditionally "mens' work" or "women's work" or because a certain job requires physical labor.

\*Inquiries regarding an applicant's religious affiliation, church, pastor, etc. (See "New York State Human Rights Law", Section III, B, 1)

#### 4. Equal Pay Act of 1963

The Equal Pay Act requires employers to pay equal wages for work that requires equal skill, effort and responsibility, regardless of sex.

#### 5. Immigration Reform and Control Act of 1986 (IRCA)

The IRCA prohibits employers from hiring individuals not authorized to work in the United States. The Act requires employers to verify every new employee's right to work in the United States within three (3) days of the date employment begins. Note that verification applies to new hires, not to job applicants.

Employers may ask if applicants are citizens, and if not, if they have the legal right to permanently remain in the U.S., and if they are eligible to work in the U.S. Inquiries regarding where the applicant is a citizen and requests for documentation (e.g., naturalization papers, passport) prior to hiring should be avoided.

#### 6. Pregnancy Discrimination Act of 1978

The Pregnancy Discrimination Act prohibits discrimination on the basis of pregnancy, childbirth, or related medical conditions and requires that pregnancy-related disabilities be treated the same as all other disabilities. Therefore, pregnancy-related conditions cannot be singled out for special procedures to determine an employee's eligibility to work. An employer cannot refuse to hire a woman who is pregnant.

#### 7. Rehabilitation Act of 1973

The Rehabilitation Act of 1973 prohibits discrimination against qualified physically or mentally handicapped individuals in employment. (See "Americans with Disabilities Act")

#### 8. Uniform Guidelines of Employee Selection Procedures (1978)

The Guidelines state that any selection procedure used to make employment decisions (application forms, interviews, questions, test, etc.) must not result in the exclusion of a disproportionate number of women or minority applicants unless an employer can prove that the procedure is job-related and a valid measure of job performance. It is important, therefore, to be sure that all employment procedures directly measure an applicant's ability.

### **B. New York State Laws**

#### New York State Human Rights Law

The Human Rights Law forbids discrimination in employment of any person based on race, creed, sex, sexual orientation, color, national origin, age (18 or older), disability, marital status, veteran status, certain arrest or conviction record information, or lawful off-duty activities, and other categories. Under the Human Rights Law, employers cannot use any of these reasons to refuse to hire, employ, bar or discharge a person from employment; or to discriminate against a person in compensation, terms, conditions, or privileges of employment.

Advertisements, policies or practices that place limitations in any of these areas, as well as any preemployment inquiries into any of these areas that are not based on a bona fide occupational qualification must be avoided. (See "Civil Rights Act of 1964 and 1991 (Title VII)")