

## **Balancing Equal Employment Opportunity and Supportive Services:**

### **What ASOs Can and Cannot Ask Prospective Workers**

As employers, alternative staffing organizations (ASOs) must be careful to comply with equal employment opportunity laws designed to prevent discriminatory hiring practices. However, ASOs can easily run afoul of these regulations in seeking to understand an applicant's particular challenges and obstacles to employment in order to deliver appropriate supportive services.

We consulted an employment attorney to provide clarity about the questions an ASO can legally ask during intake, and ideas about ways to gather information to connect workers with supportive services that may benefit them. Her response is summarized below.

Both state and federal law pertain and of course the state law varies from state-to-state.

Generally, to avoid violating these laws, ASOs should be advised that they may not make decisions, either to hire or not to hire, based on any factors that the laws are designed to prevent employers from considering in making employment decisions. These factors are referred to generally as "protected status." As a consequence, *there should be nothing in a pre-employment questionnaire that asks about protected status*. Protected status under federal law includes: race, color, religion, gender, national origin, age, marital/family status, disability, and genetic information. Many states also have additional protected categories such as sexual orientation or weight.

Even if the employer seeks to use this information to help underprivileged applicants, it should not be asked about on an application or asked about directly in an interview. It is important to note that asking direct questions regarding protected status on a job application or in an interview when it is made clear to the applicant that answering the question is optional is just as problematic as asking these types of question with no such qualification.

An employer should always avoid making employment decisions based on race, color, religion, gender, national origin, marital/family status, or genetic information. If an employer learns that an individual is disabled through the interview process (or through something written on an application), the employer can affirmatively seek to hire that individual, but an employer cannot discriminate against a person because of his or her disability. Age is a little trickier – under federal law and in most states, employers can favor older workers, but in some states it is illegal to consider age at all when making hiring decisions. Asking about criminal background is permitted in some states but not others.

Outside of the protected status factors and criminal background, ASOs can ask questions to clarify a candidate's support needs. For example, most socioeconomic factors (such as being jobless or homeless) are not protected status factors. Therefore, employers can ask questions about and make decisions based on those factors. Questions related to access to reliable transportation or an individual's interest in financial literacy training are also allowable.

ASO may be able to obtain additional pre-employment information by asking open ended questions such as:

- What is the most recent job you have held and what was your reason for leaving?
- How did you learn about this organization?
- What led you to apply to this organization?

To gather data for reporting to funders or identifying support needs, an ASO could also distribute anonymous questionnaires to individuals to whom they have already offered jobs.

In many ASOs, shared databases and multitasking staff blur the boundaries between case management and job matching of candidates. Be sure your system for managing employee intake and recordkeeping complies with equal employment laws.