

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

Yuba Community College District / January 13, 2021

Presented by: Laura Schulkind

LCW LIEBERT CASSIDY WHITMORE



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AGENDA

- **Mandatory Training Requirements--4 Areas:**
 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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EEO PLAN REQUIREMENTS

What Training is Required?

- On 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
- Fair Employment and Housing Act (FEHA)
- Title IX
- ADA
- ADEA

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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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EEO 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

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EEO 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)

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EEO 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

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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...

Why Does Diversity Matter to CCDs?

Core Mission:

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

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EEO 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.

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

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WHAT IS UNCONSCIOUS BIAS?

- **Unconscious bias in the hiring context (con't):**
 - **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 to heavily on one piece of information when making decisions

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WHAT IS UNCONSCIOUS BIAS?

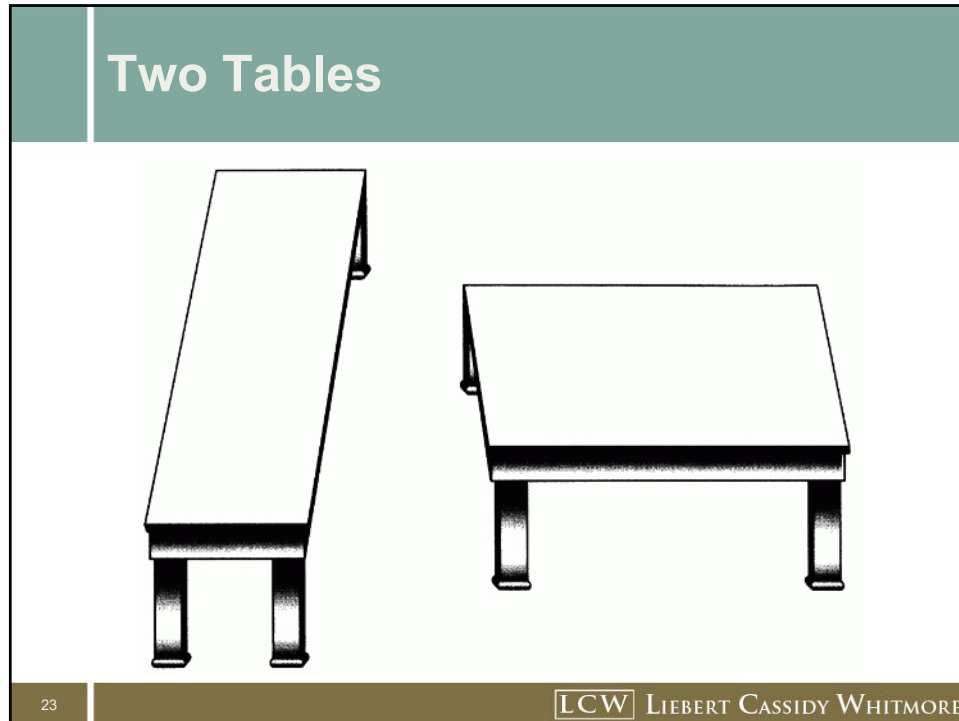
- **Unconscious bias in the hiring context (con't):**
 - **Bandwagon effect**
 - The tendency to do (or believe) things because many other people do (or believe) the same thing
 - **Negativity Effect**
 - The tendency to allow things that are negative to have a more significant effect than things that 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.

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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”

Example:

Do you need to know the names/genders of candidates at the screening stage?

What would happen if you did not?

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STRATEGIES FOR “INTERRUPTING” UNCONSCIOUS BIAS

- Create inclusive job descriptions
- 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
- Have members explain low scores

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HIRING COMMITTEE BEST PRACTICES FOR PROMOTING EQUITY & DIVERSITY

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DIVERSITY IN THE HIRING PROCESS

The Big Picture: Key Steps Precede Application Review

- Remove access barriers from job descriptions/qualifications
- Include job-related criteria that enhance diversity
- Use recruitment strategies to create diverse, qualified applicant pool
- Implement procedures designed to eliminate bias in the decision-making process

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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 FORMATION

- Diverse to the extent possible
- Committee must be trained
- Don't participate if :
 - Can't fairly and objectively evaluate candidates
 - Appearance of bias to a reasonable person
 - Can't give full attention/attend all meetings

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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.

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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 H.R. throughout process**
 - Title 5 compliance
 - Anti-discrimination laws and rules
 - Elimination of bias

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SCREENING PROCESS — DEMOGRAPHIC DATA

- **Role of demographic data**
 - CCCCO: Committee may be provided race and gender data re: workforce and department
 - Risks: Hiring becomes suspect
- **Strategies**
 - Provide demographic data when it is not tied to a specific search
 - Make it part of common knowledge and discourse

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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

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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."

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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 quals.?
→ Review documentation
- Does the candidate possess any of the preferred quals.?
→ 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 his/her field?
→ Response to interview questions

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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?

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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.*

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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.

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MAKING THE MOST OF THE INTERVIEW

Developing appropriate *and useful* questions

2. Craft Questions:

- 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
 - Show other KSAs that will provide an opportunity for non-traditional candidates to show they are highly qualified

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MAKING THE MOST OF THE INTERVIEW

Developing appropriate *and useful* questions

2. 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 questions → to understand candidate’s depth of knowledge, skills & abilities
 - Hypothetical questions → for creativity & problem-solving
- Plan ahead how committee will evaluate answers
- As a committee, outline the components of an excellent answer

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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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