



**Monday, February 11:**

## **What Pre-Hire Screening Questions Can Our Recruiting Team Ask About Immigration Status?**

There are two DOJ/OSC-approved questions that your organization should incorporate into your pre-hire screening process:

1. Are you legally authorized to work in the U.S.?
2. Will you now, or in the future, require immigration sponsorship for employment in the United States?

These questions should be asked of every candidate, applied evenly across the board. So, best practice is to incorporate these 2 questions into the pre-hire screening process within your organization's applicant tracking or talent management system.

### **What if a candidate responds affirmatively to Question #2, above? Is my organization legally obligated to continue the screening process to avoid a claim of citizenship discrimination?**

No, an employer is under no legal obligation to hire a foreign national candidate who requires immigration sponsorship for employment.

If, however, your organization is interested in hiring a foreign national who will require sponsorship, your recruiting team should collect additional data about where the candidate is with his/her visa process to assist in your decision-making process as there are maximum periods of stay associated with most work visas in the United States, especially the popular H-1B category.

### **What else are we permitted to ask about a candidate's immigration status?**

A visa candidate should be further vetted to determine whether immigration sponsorship makes sense for your organization. Here are some proposed questions to accomplish this task:

1. Are you currently eligible for an H-1B transfer?
2. How much time do you have remaining in H-1B status? (Said differently, when did you begin working in the U.S. pursuant to H-1B status?)
3. Are you currently in the green card process? If yes, at what stage of the green card process?
4. Do you have an approved I-140 petition?

Equipped with this information, your organization can make a more informed decision on whether to hire the individual. HR should also consider other factors, including start date / timing considerations and prevailing wage requirements, which considerations will be addressed in future HR Tips from Meyner and Landis LLP. Stay tuned!

For further information, please contact:  
Scott R. Malyk and/or Tony Siliato  
Meyner and Landis LLP  
One Gateway Center, Suite 2500, Newark, New Jersey 07102  
smalyk@meyner.com  
asiliato@meyner.com

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