

EMPLOYMENT LAW DEPARTMENT

Avoiding Discrimination During Recruitment

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1. How can an employer make sure that their recruitment practices aren't unintentionally discriminatory?

When beginning the process of recruitment, an employer has to start as early as the job advertisement to avoid the potential of discrimination. It will be important to think carefully about the language which is used as words such as "energetic" could exclude someone who uses a wheelchair, has mobility problems, or may be older and therefore perceived to have less energy. Employers should also think about the employee specification and the criteria which are identified as being essential or desirable for the applicant. Does a candidate truly need a clean driver's licence for example? If a job does involve lifting or manual handling, consider how much is involved and whether equipment such as hoists could reduce (or even avoid) the need for too much heavy lifting so as to make the role more accessible for more people. Is it essential for a role to be filled on a full time basis (which may make it harder for someone who has caring responsibilities to apply, and this will more often be women) or could it be done on a job share basis.

The characteristics which are protected by the Equality Act 2010 and on the grounds of which it is unlawful to discriminate are:

- Age
- Disability
- Gender reassignment
- Marriage and Civil Partnership
- Pregnancy and maternity
- Race
- Religion or belief
- Sex
- Sexual orientation

Further thought might be needed when interviews are arranged. An employer can ask applicants if they have a disability so that any adjustments which should be made to the interview process can be considered. These adjustments could include changing the location of the interview room, allowing more time for written assessments or adjusting the time at which the interview will take place. However an employer needs to be careful that in asking that question in relation to arrangements for interviews they do not allow that information to influence their recruitment decisions.

It's important to avoid making stereotypical judgements and assumptions such as presuming a disabled candidate would be physically unable to carry out certain aspects of the role or won't fit in with the work culture and existing staff.

2. How far should an employer go in terms of making adjustments?

Reasonable adjustments must be made when a disabled person is put at a substantial disadvantage by either a physical feature of the premises or a provision, criterion or practice that has been applied in the arrangements for employment. When this happens there is a duty to take reasonable steps as are necessary to avoid or reduce the disadvantage. What amounts to a reasonable adjustment will vary depending on the disability and what criterion has been applied that an individual says is causing them the disadvantage.

3. What if the employer doesn't know a candidate is disabled?

If the employer doesn't know, and can't reasonably be expected to know that someone is disabled and that they are likely to be disadvantaged but particular arrangements which are in place, then the employer is not under a duty to make adjustments. However if an employer knows a candidate is disabled they would be wise to make enquiries with them about whether anything in the recruitment process may cause them disadvantage and then make suitable adjustments as necessary.

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