



Questions about disability and health after a job offer has been made

Once an employer has decided an applicant meets the requirements for the job, they might consider offering the applicant a job, or placing them in a pool of successful applicants to be offered jobs as vacancies arise.

At this point the employer can make a conditional job offer.

Meeting the health requirements for the job may be one of the conditions of the job offer.

The employer can then ask any remaining questions they may have about disability and health. However, they cannot reject someone just because the medical shows that they have a disability; the job offer can only be withdrawn if the medical shows that they would not be able to do the job properly.

An employer cannot ask an applicant about sickness absence in previous jobs until the applicant has been offered a job. This is because a disabled person who has to take more time off sick than someone else could claim that the employer was discriminating against them because of something arising from their disability, which could be unlawful.

However, an employer can ask about sick absences **once the offer of a job has been made**. If the applicant's sick records show that they have been off sick because of a disability, the employer can ask for more information, including medical evidence (e.g. are they going to be off sick in the near future because of their disability and if so, for how long)? Depending on the answers and the nature of the job, the employer may be able to withdraw the job offer.

Example 1

Sarah has been offered a nine month contract as a hairdresser. Further discussions with Sarah reveal that she has cancer, and has already had extensive sick leave with a previous employer; and further treatment will require her to be off work for another six months in order to undergo treatment. In these circumstances the employer may be able to justify withdrawal of the job offer. However, the employer can't just assume, relying **on their own opinion** about what treatment may be necessary, that a diagnosis of (say) cancer will mean that the person will be off sick for too long to justify giving them the job.

Example 2

Hardip has been given a conditional offer of employment with a small firm of accountants. However, he tells the employer he has had 30 days' sick leave in the past six months. The sick absences are for a variety of reasons, **but none are covered by the [definition of disability in the Act](#)**. Hardip believes that this level of absence is unlikely to re-occur, but cannot guarantee that this will not be the case. The employer withdraws the job offer because he feels that his small firm cannot risk employing someone who **may** have extensive sick leave, as there is no one else available to cover the work, should Hardip go sick for a lengthy period of time whilst in his employment. The employer would be within his rights to withdraw the job offer, because the disability discrimination provisions in the Act do not apply.

Example 3

Joel has had extensive sick leave in a previous job because he has HIV. However, his symptoms are now under control and Joel is ready to go back to work. The employer cannot withdraw the job offer on the supposition that because a **disabled person covered by the Act** has had extensive sick leave in a previous job, they are likely to repeat this pattern of absence in their new job.

Example 4

John has been offered a job as a labourer, but the company medical reveals that he has a previously undiagnosed heart condition. The job offer might be withdrawn, depending on the nature of the job and of the condition. However, the employer can't just rely on their own opinion about what someone with a particular condition can and can't do. They would need medical evidence that the condition would mean that the person could not be employed, for example, as a labourer.

Example 5

Marcus has undergone the selection process to be a police constable. However, the police force conducting the recruitment exercise makes clear that the final job offer cannot be confirmed until Marcus has passed a health and fitness medical because it is an essential part of the job that he is fit enough to pursue suspects and make an arrest.