

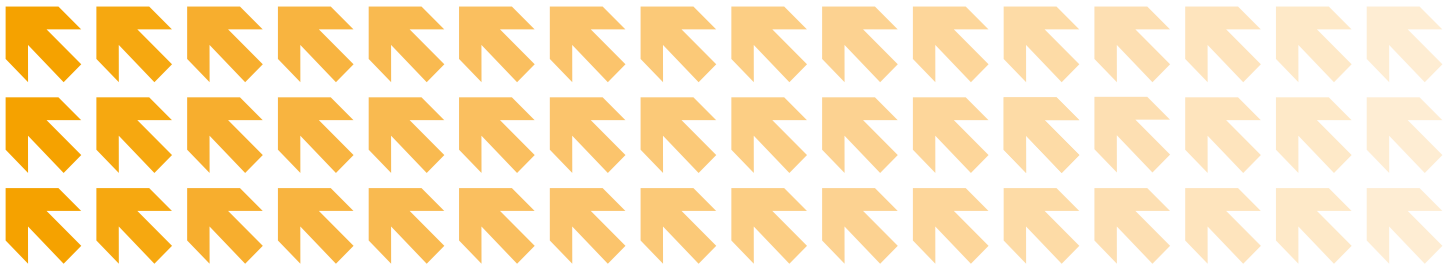


Government
Equalities Office

Putting equality at the heart of government

EQUALITY ACT 2010: WHAT DO I NEED TO KNOW? A QUICK START GUIDE TO THE BAN ON QUESTIONS ABOUT HEALTH AND DISABILITY DURING RECRUITMENT





Foreword

The Equality Act 2010 replaces the previous anti-discrimination laws with a single Act. It simplifies the law, removing inconsistencies and making it easier for people to understand and comply with. It also strengthens the law in important ways to help tackle discrimination and inequality.

This quick start guide is intended to help employers and job applicants understand new provisions in the Act which prevent employers asking job applicants questions about health or disability during early stages of the recruitment process. It explains the types of questions that are not allowed at these stages and situations when questions about health and disability are permitted.

The relevant provisions of the Act came into force on 1 October 2010, so employers will need to ensure that they are complying with their obligations.

Introduction

The Equality Act 2010 brings together, harmonises and in some respects extends the previous equality law. It aims to make it more consistent, clearer and easier to follow, in order to make society fairer.

The Act contains new provisions which aim to stop disabled job applicants being screened out early in the recruitment process.

In the past, some employers asked questions about health or disability in the initial stages of recruitment. Disabled applicants were being rejected before

interview and before being given the opportunity to have their suitability, skills and experience for the work considered by the employer. This resulted in unfair discrimination.

The new provisions aim to ensure that disabled applicants are given the opportunity to have their ability to do the job in question properly assessed. They also aim to ensure that disabled people are not discouraged from applying for work because they will be asked questions about their health and disability on application forms.

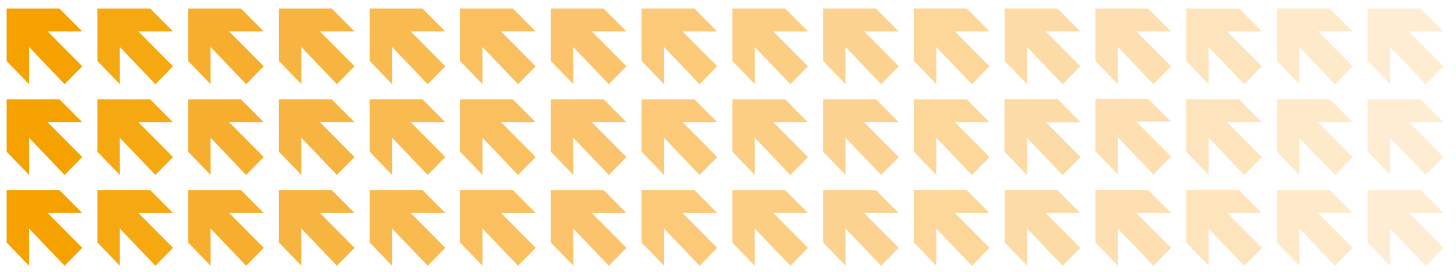
There are a few specific circumstances when questions about health and disability can be asked during the initial stages of a recruitment process. These are explained later in this guide.

Further information on how the Act protects disabled people is available at: http://www.equalities.gov.uk/pdf/401727_EDF_Disability_acc.pdf

Who has responsibilities?

These provisions apply to any person recruiting people for work. In most cases, this will be an employer or someone working on their behalf such as a recruitment agency. However, the restriction also applies to people who are recruiting people for contract work, business and limited liability partnerships, work as a barrister or advocate, or for a personal or public office (such as a position as a director of a business or a non-executive director of a public body).

This guide uses the term “employer” to cover all of the above.



Example

Matt would like to find temporary office work and contacts a recruitment company to see if they are able to place him anywhere. The recruitment company is unable to ask Matt any questions that relate to his health or disability (except in the specific circumstances outlined later in this guide) while they are in the process of recruiting him for temporary contracts.

Questions about previous sickness absence are classed as questions that relate to health or disability and must not be asked.

Specific circumstances when questions about health or disability are allowed before a job offer

There are certain specific situations in which health or disability questions are allowed to be asked during the early stages of the recruitment process.

1. To establish whether the applicant can take part in an assessment to determine their suitability for the job.

What is prohibited?

The general position is that it is unlawful for an employer to ask **any** job applicant about their health or disability unless and until the applicant has been offered a job. (But note that there are a few specific circumstances when questions about health and disability can be asked. These are explained later in this guide.)

Where an organisation is holding a bulk recruitment exercise, this restriction on questions about health or disability applies up to the point where an applicant has been placed in a pool of successful applicants who are to be offered jobs as vacancies arise.

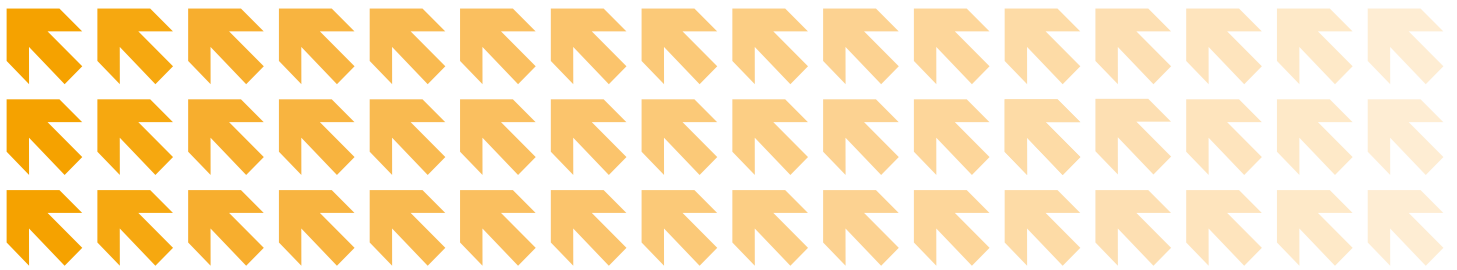
It is also unlawful for an employer's representative to ask a job applicant questions about their health or disability. This means that an employer cannot refer an applicant to an occupational health practitioner or ask an applicant to fill in a questionnaire provided by an occupational health practitioner before a job offer is made.

Example

Khalid applies for a job at a scaffolding company. During the recruitment process Khalid is asked whether he is able to undergo an assessment to demonstrate he can climb scaffolding safely. This would be lawful because it enables the employer to ensure that Khalid is able to undertake the assessment to show his suitability for the job.

2. To determine whether any reasonable adjustments need to be made to enable a disabled person to participate in an assessment during the recruitment process.

Further information on what is a reasonable adjustment can be found at:



<http://www.equalityhumanrights.com/advice-and-guidance/guidance-for-employers/the-duty-to-make-reasonable-adjustments-for-disabled-people/>.

Employers must ensure that information on health or disability which has been obtained for the purpose of making reasonable adjustments during the recruitment process does not form any part of the decision-making process about whether or not to offer a job.

Employers should keep any information on disability and health, obtained for the purpose of making reasonable adjustments during the recruitment process, separately from other information.

Example

Katie applies for a job in a call centre. As part of the selection process, the call centre requires applicants for customer service posts to undertake an exercise that involves handling a series of practice calls and inputting data to a computer. The employer asks Katie whether, because of health or disability, she requires any reasonable adjustments to be made so she can take part in the practice exercise. This would be lawful.

An employer cannot ask questions about whether any reasonable adjustments need to be made to carry out the job itself until after a job offer has been made.

3. To find out whether a job applicant would be able to undertake a function that is intrinsic to the job.

An intrinsic function of a job is a function which, if it could not be performed, would mean that the job could not be carried out.

Example

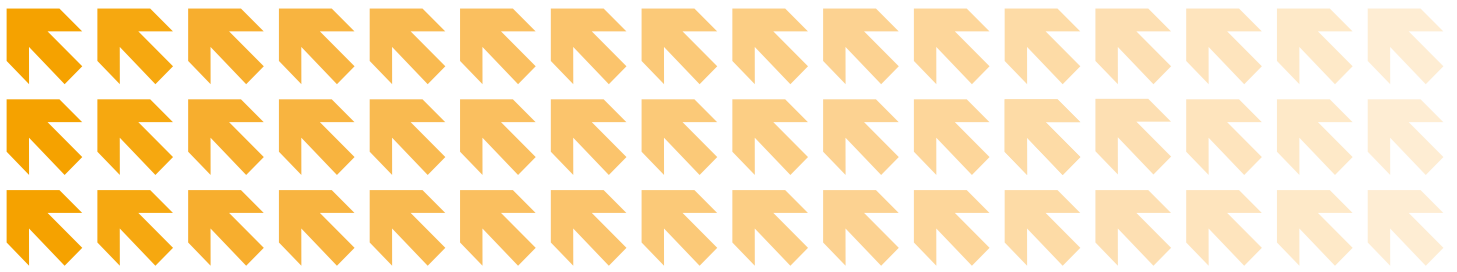
Mary applies for a job at a residential care home as a care assistant. An intrinsic element of the job is the ability to be able to help lift and physically support residents. The employer would be allowed to ask Mary questions relating to health or disability in order to determine whether Mary is capable of lifting and physically supporting residents because it is intrinsic to the job.

4. To monitor diversity among job applicants.

Monitoring information should be kept separate from application forms in order to minimise the risk that this information will influence the selection process.

Example

Jacinda runs a catering company and wants to make sure that the recruitment procedures are operating fairly. The company is allowed to ask applicants whether they have a disability, so that it can monitor how disabled candidates fare at each stage of the recruitment process compared to non-disabled candidates.



5. To support “positive action” in employment for disabled people.

The Act allows an employer to take “positive action” to assist people who are disadvantaged or under-represented in employment. This can include action to improve employment opportunities for disabled people. An employer is allowed to ask an applicant if they are disabled for the purpose of ensuring that the applicant can benefit from any action the employer has taken to improve the employment rate of disabled people.

For example, an employer is permitted to ask if an applicant is disabled so that it can ensure that the applicant qualifies to be included in a guaranteed interview scheme. When asking questions about eligibility for a guaranteed interview scheme, an employer should make clear that this is the only reason the question is being asked.

Example

Liam applies for a job with a large retailer. The retailer wants to improve disabled people’s chances of being selected for its vacancies. Therefore, it offers guaranteed interviews to disabled people. In order to identify disabled people, the retailer is allowed to ask whether Liam has a disability and wishes to take advantage of a guaranteed interview.

6. If there is an occupational requirement for the person to be disabled.

The employer would need to demonstrate that a person with a particular impairment is required for the job in order to ask questions about health or disability.

Example

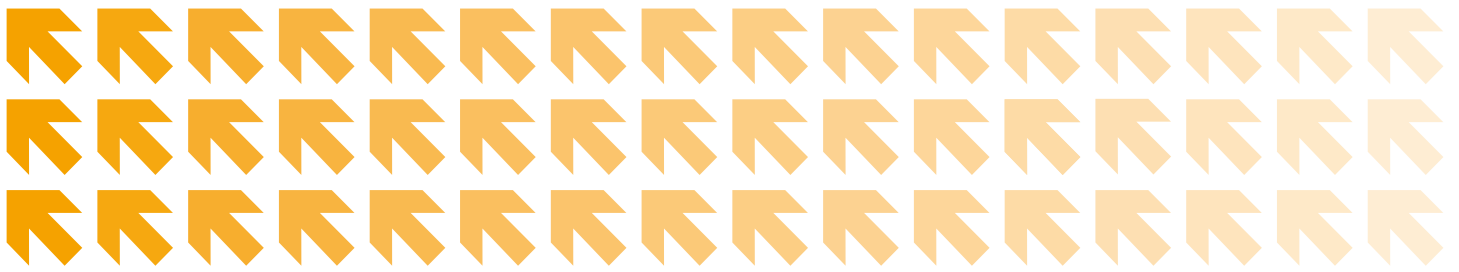
Harry applies for a job as a counsellor for people with mental health conditions. One of the requirements for the job is that counsellors must have personally had a mental health condition. The counselling centre advertises for candidates explaining this. During the interview Harry is asked to confirm that he has had such a condition. This is lawful because experience of having a mental health condition is an occupational requirement of the job.

National security vetting

In addition to the above circumstances, the Act does not prevent an employer asking applicants questions about health or disability for the purpose of vetting them for national security reasons.

Example

Niall applies for a job in a government department which would involve handling highly sensitive documents. The department is allowed to ask Niall questions about health or disability in the recruitment process if this is needed to vet him for the purpose of national security.



After the selection process

Once the employer has decided that a job applicant meets the requirements for work, the employer might make the applicant a job offer, or place the applicant in a pool of successful applicants to be offered jobs as vacancies arise.

At this point, the employer is allowed to make the offer conditional upon the successful applicant meeting the employer's health or other requirements. The Act does not then prevent the employer asking questions relating to health or disability. The employer may, for example, need to ask questions to determine whether a successful applicant would be eligible for job-related benefits, or would need reasonable adjustments to enable them to do the job.

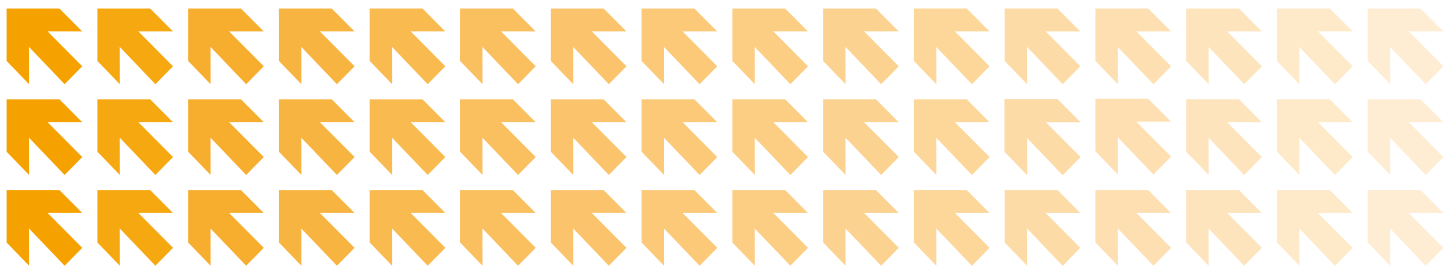
However, an employer must avoid making final job award decisions that discriminate against disabled people – see “Avoiding direct discrimination” section below.

Example

Huang has been offered a job with a large consultancy firm. The company enrolls all its employees into a health insurance scheme as part of their employment conditions. As such, the firm makes Huang's job offer conditional on him being eligible to join the scheme. The employer, or the operator of the health insurance scheme acting on behalf of the employer, may ask any disability or health-related questions that are necessary to determine whether Huang is eligible for the scheme before making the final decision to appoint him.

Example

Nicole has received an offer from a local authority for a job as a clerical worker, because she has shown she has the required skills and experience for the job. The local authority asks Nicole whether there is a need to make any reasonable adjustments to the job, the working arrangements or the workplace to enable her to do the job. This is permitted.



Avoiding direct discrimination

If an employer rejects an applicant solely because the person has a disability, this is direct discrimination and is unlawful. At whatever stage of the recruitment process an employer gains information about a person's disability, the employer must not use that information to discriminate against the disabled person because of the person's disability.

Employers can make job offers conditional upon satisfactory responses to disability questionnaires or satisfactory health checks. However, they must ensure that they do not discriminate against a disabled job applicant on the basis of any information gained from such questions or checks.

If an employer asks questions that are unlawful

If a person thinks that an employer has acted unlawfully by asking questions about health or disability that are not permitted, the person can complain to the Equality and Human Rights Commission, which has powers to take enforcement action against the employer. A person does not need to have a disability to complain to the Equality and Human Rights Commission in this situation.

A person cannot bring an Employment Tribunal claim against an employer for asking unlawful questions about disability and health. It is only where such questions are asked and the employer uses the information gained to discriminate against the person that he or she can bring a disability discrimination case in an Employment Tribunal. If an employer asks unlawful questions but does not use

the information to discriminate against the person because of disability (for example the disabled person is nevertheless offered the job) no discrimination has occurred and there is no case to bring.

Further sources of information

The Equality and Human Rights Commission is the statutory body established to help eliminate discrimination and reduce inequality. It produces statutory Codes of Practice explaining the law in more detail. It also produces a range of material providing practical guidance on equality law and good practice.

Advice UK
www.adviceuk.org.uk

Citizen's Advice
www.citizen's.advice.org.uk

Employers Forum on Disability
www.efd.org.uk

Government Equalities Office
www.equalities.gov.uk

Office for Disability Issues
<http://odi.dwp.gov.uk/>

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