



ASKING QUESTIONS ABOUT HEALTH AND DISABILITY WHEN RECRUITING

This guidance is aimed at businesses, particularly small and medium-sized businesses, seeking to recruit staff. It covers an area of law which is relatively new and which businesses have reported as confusing. This is:

What questions does the law allow me to ask job applicants about their health or disability?

The relevant piece of law is section 60 of the Equality Act 2010 (“the Act”). It limits the questions which, when you are recruiting, you can ask applicants upfront about their health and disability. It does not prevent you from asking relevant questions before deciding whether to give someone a job.

This piece of law came into force because there was evidence that disabled applicants¹ were being automatically rejected from applications and not given a fair chance to show whether or not they could do the job. It is designed to give disabled people a fair chance to compete for jobs, not intended as a guarantee that they will be offered jobs regardless of suitability. Nothing in the law requires you to recruit anyone except the best person for the job – who may or may not be a disabled person. But you cannot reject a disabled person just because they are disabled – you would need to be sure that they could not do the job.

What questions can/ can't I ask, and when?

Once you offer someone a job, there is no limit on the questions you can ask (and you can make the job dependent on the answers). Until then, there are some limits, depending on the job.

Starting off the application

When you want to recruit someone, there are a number of ways of starting this off:

¹ A person must meet the Act's definition of a disabled person in order to be protected from disability discrimination. The Act does not specify an exhaustive list of conditions that are protected, though some are listed e.g. cancer. Instead, the general definition of disability for the purposes of the Act is “a physical or mental impairment which has a substantial and long-term adverse effect on a person's ability to carry out normal day-to-day activities”. The Act defines long-term in this context as having lasted or being likely to last for at least 12 months, or likely to last for the rest of the life of the person. Substantial is defined as more than minor or trivial.

asking around; a job advert; using Job Centre Plus; some larger firms might have a written application process or use a recruitment agency.

At the same time, you also start off with an idea of what the job requires. You cannot place an advert which says “not suitable for a disabled person” because that would be unlawful disability discrimination.

But you can start off by asking a job applicant upfront any questions about health or disability when they concern whether or not he or she can do something that is vital for the job. For example, you may need to know whether a job applicant can undertake a function that is intrinsic to the job.