

Employment Law Fact Sheet No. 1

RECRUITMENT ISSUES



Discrimination on the grounds of sex, pregnancy or maternity, race, disability, sexual orientation, gender reassignment, marriage and civil partnership, religion/religious belief and age is unlawful. An individual does not have to be an employee to make a claim of unlawful discrimination and such claims frequently arise from interviews or regarding promotion.

Advertising and Recruitment

- Advertisements should not contain anything potentially discriminatory. Avoid using language likely to indicate a particular group is required. Words such as “lively”, “energetic” imply younger or able-bodied candidates are required. Likewise words like “mature” and “experienced” imply older candidates.
- Avoid discriminatory questions. For example, asking for marital status or whether the candidate has children may give rise to claims for discrimination
- The criteria used in candidate selection should be objective and based around the skills needed for actual performance of the job. If expressing a need for a particular UK qualification, it is always best to refer to the qualification and add the words “or equivalent”.

References

Must be a fair overall impression and not be misleading.

A position can be offered subject to the provision of a satisfactory reference. To minimise arguments employers may state: “Subject to the provision of a reference which we consider satisfactory”.

Medical and other checks

The Equality Act prevents employers from asking applicants questions about their health before they are offered a job subject to certain exceptions. If, for example, a health question is relevant to decide whether a candidate can carry out an essential function of the job, it is allowed. So, for example, where an employer asks an applicant for a rider position if he has an injury that may prevent him from being able to ride a horse, this is permitted.

If it is necessary to carry out medical checks, the employee’s express agreement to the obtaining and processing of this information is necessary. Such information should be stored securely and access should be restricted to only those with a genuine need to see it. If such checks are not for a reason that permits enquiry prior to the job offer has been made these should only be carried out after the job offer has been made (e.g. for health care scheme eligibility).

Immigration

It is illegal to employ someone who does not have permission to work in the UK. Therefore employers should check the successful candidate's documentary evidence of entitlement to work in the UK.

The following guidance will assist: [GOV.UK: Prevention of Illegal Working](#)

- You should carry out these checks on all individuals (including UK Nationals) regardless of race so as to avoid claims for discrimination.
- If you are concerned about your obligations or the validity of documents submitted to you contact the Home Office Employer's Helpline for further information:
- Employers Helpline: 0300 123 4699
- Employers wishing to sponsor non-European Economic Area migrants (or nationals of Croatia) to work have to register as licensed sponsors (see Right to Work in the UK factsheet for further details).

Action Points

- Ensure job advertisements, interviews and selection criteria are free from potential discrimination.
- Describe what is required in terms of the features of the role rather than characteristics of the individual.
- Ensure pre-employment questionnaires only ask health related questions to the extent necessary to ascertain whether an individual can carry out an essential function of the job.
- Obtain proof of entitlement to work in UK from all new employees. (See Right to Work in the UK factsheet for further details of your obligations).
- Do not assume that you want (e.g.) a man/woman for a particular position.
- Visit the link below to learn about your obligations when storing employee data information (such as references)

<https://ico.org.uk/for-organisations/guide-to-data-protection/employment/>

- Visit the link below to learn about the position regarding non EEA Nationals (and Croatian nationals). Further information is also available on this topic from the TBA fact sheet Right to Work in the UK & The Points Based System.

[GOV.UK - Employer Obligations](#)

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