



Discrimination issues in recruitment



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The Equality Act 2010 outlaws discrimination and harassment in relation to nine 'protected characteristics':

- Age
- Disability
- Gender reassignment
- Marriage and civil partnership
- Pregnancy
- Maternity
- Race
- Religion or belief
- Sex
- Sexual orientation

Who can be liable for discrimination in recruitment?

- **The employer** – can be liable for the actions of its managers and other employees unless it can prove that it took 'all reasonable steps' to prevent discriminatory acts;
- **Any employee;**
- **Recruitment agents** – for their own discriminatory actions and/or acting upon any employer's express instructions which may be discriminatory;
- **Publishers** – can be liable for publishing a discriminatory job advertisement on behalf of an employer

Recommended good practice to minimise the risk of successful claims

- **Create a paper trail** – ensure that you have documentation covering the recruitment process, written clearly and objectively which justifies any decision and the process by which it was reached.
- **Train interviewers** – it is advisable that any staff involved in the recruitment

process are trained in equal opportunities and are familiar with any company recruitment and/or equality policy.

- **Reasonable steps defence** – all the above can provide evidence to an employer to support such a defence if a job applicant brings a claim.

What practical steps can you follow to minimise discrimination issues arising?

1. Clearly identify the vacancy;
2. Preparing a job description and person specification (this should be free from an potentially discriminatory issues);
3. While discrimination is generally prohibited, in certain circumstances specific exceptions may be relied upon as a defence. For example, occupation requirements such as the need for authenticity or realism in acting roles;
4. Positive action can be lawful: this is where persons who share a protected characteristic suffer a disadvantage connected to the characteristic. The employer can take proportionate action to address these problems. For example, where evidence shows a certain age group is more likely to require I.T training, training could be targeted at that age group only;
5. Advertising the vacancy – there is no legal obligation to advertise but not doing so could increase arguments of discrimination. Equally, when advertising a job ensure that the content of the advertisement is not discriminatory in anyway;
6. Use a 'standardised application process' ;



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7. Shortlisting and interviewing – ensure this remains fair, consistent and results in appointment of the most suitable person whilst not putting any applicants at a disadvantage in connection with a protected characteristic e.g. you may need to avoid certain dates and times coinciding with religious festivals;
8. Consider giving feedback to unsuccessful applicants (if requested).

What if an employee lied during the recruitment process?

We would recommend offers of employment are made conditional upon specific requirements being satisfied and that there are clear provisions in disciplinary and recruitment policies indicating that if incorrect information is given by employees, this may result in dismissal.

It is good practice to follow a disciplinary process where it is considered an individual may have knowingly supplied incorrect information and it must be followed where the discovery is not made for some time and an individual has therefore been employed for 2 years or more.

The information contained in this document provides background information only. The document may be misleading if relied upon as an exhaustive list of the legal issues involved. If any matter referred to in this document is sought to be relied upon, further information should be sought.