

Briefing

Managing recruitment

Abridged content for sample purposes

Managing recruitment

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Contents

Introduction	4
Positive discrimination and pro-active recruitment	5
Designing job roles	7
Attraction, applications, short listing and interviews	10
E-recruitment	17
Employment agencies and the recruitment industry	19
Making adjustments to tests and assessments	23
How to interview	25
Medical questionnaires and health examinations	27
The job offer	30
Monitoring the recruitment process	35
Regulatory framework	36
Further information	40
Further sources of reference	46
Contact us	60

Introduction

Managing recruitment

This is one of a series of briefings, published by Business Disability Forum, which provide practical guidance for employers on specific topics relating to the employment of disabled people. It will be particularly useful for personnel or human resources managers, occupational health advisers, line managers and employment agencies.

This is a practical guide to recruiting disabled people on merit and/or their contribution. It will be useful for anyone involved in recruitment, or training, either at a policy level or on a day-to-day basis, including personnel and human resources managers, occupational health advisers as well as line managers.

This paper will help you to make simple changes to your recruitment process which will make it easier to treat every applicant fairly, as well as show you how to make adjustments for individuals based on their particular needs.

It will help you to not only avoid legal risk but to use best practice to better attract talent and improve recruitment generally across your organisation.

Positive discrimination and pro-active recruitment

Past and present barriers to employment and work experience can disadvantage disabled people. You may decide that in order to increase the number of disabled people in your organisation you need to take positive action or even to discriminate positively in favour of disabled people.

Positive action

Positive action is encouraging disabled people to apply for jobs. This is lawful. An example would be to include a positive action statement on your job adverts such as 'we welcome disabled applicants' or 'being part of Business Disability Forum's membership, highlights our commitment to becoming a disability-smart organisation'.

Positive discrimination

Positive discrimination for disabled people is legal for most employers in the UK. This is because when it comes to disability, the Equality Act 2010 is an asymmetrical piece of anti-discrimination legislation. It only protects the rights of disabled people. It does not protect non-disabled people apart from in limited circumstances where a non-disabled person is treated less favourably because they have supported a complaint of discrimination by a disabled person, or because they are associated with a disabled person or are wrongly perceived to be disabled.

Employers should note that positive discrimination only applies to the disability component of the law, it is unlawful to positively discriminate on the grounds of the other protected characteristics such as race or gender as these cover men and women and people of all races.

This means that most employers can decide to either advertise jobs as open only to disabled people or allow disabled people the first attempt to secure vacancies. Only when the suitability of the disabled candidates has been decided is the recruitment drive widened to include everyone.

Many leading UK employers have decided to address the under-representation of disabled people in their workforces positively by, for example, using disability-only talent pools and shortlists, working with specialist recruitment agencies, or implementing 'recruitment that works' projects (where the employer works closely with an intermediary such as Jobcentre Plus, and disabled candidates to help match and build their skills for particular positions).

Positive discrimination and local authorities

Local authorities are not permitted to positively discriminate in favour of disabled people by the Local Government and Housing Act 1989. Local authorities can, however, take positive action to encourage applications from disabled candidates if disabled people are underrepresented in their workforce.

Positive discrimination is one of a number of tools for an employer to use in becoming disability confident. It can help an employer to target disabled people where they are under-represented in recruitment or training. However positive discrimination is not a substitute for ensuring that mainstream policies practices, and procedures are barrier-free for disabled applicants and disabled employees. Under-representation of disabled people in certain roles or in training may indicate where there are barriers to be removed. All policies should be barrier-free, rather than relying on positive discrimination to redress the balance.

Designing job roles

Good job design will help to ensure that job adverts, job descriptions and person specifications do not discriminate, as well as making it easier for every new employee to perform effectively.

Throughout the recruitment process ensure that you use competency-based job specifications, advertising, assessments and interviews.

Guidance on designing job roles has been produced by the Health and Safety Executive. The best practice they have identified is useful when considering whether job roles have been effectively defined in order not to discriminate against disabled or other candidates.

When designing job roles consider carefully:

- The demands you are placing on an employee in terms of workload, skills and their capability to do the job given work patterns and environment.
- The control over the role offered to the employee.
- The employees understanding of their own role in relation to the organisation and the extent to which their role conflicts with others.

Undertaking risk analysis may help you to identify where additional support may need to be made available for particular roles.

Writing job descriptions and person specifications

Every job should have an accurate job description. When writing job adverts, job descriptions and candidate specifications ensure you do not needlessly exclude a disabled candidate. For example, if you do not take the time to ensure job criteria are grouped into what is 'essential' and what is 'desirable', you could unintentionally exclude candidates who are accomplished in the crucial aspects of the role.

Concentrate on what is to be achieved in the job rather than how it is to be achieved.

The following examples show how to allow candidates to demonstrate their capacity to do the job:

'Must touch type'

This does not explain why touch typing is essential and may exclude a capable candidate with repetitive strain injury (RSI).

Replace with, 'you will need to produce accurate reports using a word processing package'.

This will allow a candidate with RSI to demonstrate their ability to meet the criteria using voice- activated software.

'Must have driving licence'

This does not explain why a driving licence is essential, and may exclude a candidate with a visual impairment or arthritis who cannot drive (if used in an advertisement it may also mean that you are advertising in a discriminatory manner and in breach of the Equality Act 2010 – see below).

Replace with, 'extensive travel throughout the UK to meet clients is essential'.

The candidate may be able to demonstrate how they will meet this requirement by using alternative methods of transport.

Under the Equality Act 2010 and indeed in terms of organisational effectiveness the outcome is more important than the process. Whenever preparing job descriptions and candidate specifications, keep in mind that a disabled person may carry out a task differently but with the same result.

'Four GCSE's required' or 'Work experience required'

When including minimum educational qualifications and specific work experience as core criteria for a position, consider whether these are indeed essential. Good disabled candidates may have received a less formal education or experienced discrimination in the education system. Similarly they may have less work experience because employers have not been willing to offer them a chance.

If you do use minimum criteria it is important to state that you will consider candidates who can demonstrate that they have, by other means, acquired the skills of which qualifications or work experience are an indicator.

Avoid requiring competencies which apply to every position in the organisation, such as 'will be a team player'. If working in a team is not core to a job role you could risk discriminating, e.g. against an individual with Asperger syndrome, who would have all the competencies for the position but would find it hard to work in a team that requires a lot of interaction.

Avoiding future employment problems

Unreasonable expectations, conflicting demands and a lack of clarity about the scope or responsibilities of a role can be a major cause of work-related stress, and may cause or exacerbate other physical and mental conditions.

When drawing up job descriptions:

- Ensure that the job description clearly describes the purpose, tasks and responsibilities attached to the role and how it contributes to the overall aims of the organisation.
- Focus on what is to be achieved not how it is done.
- Explicitly describe the scope of the role and the management or reporting processes associated with the post.
- Ensure that your expectations of the post-holder are reasonable in relation to the training and resources available.
- Identify any inherent risks associated with the demands of a post and ensure mechanisms are put in place to support the successful candidate when appointed.

It may be appropriate to communicate to prospective candidates that there is a particular level of pressure or responsibility attached to some roles. However such statements in job descriptions should not be regarded as a disclaimer or abdication of responsibility.

Employers still have a duty of care to manage the pressure and levels of stress that their employees are exposed to in the workplace. Generalities such as, 'must be able to work under pressure' or 'must be able to work in stressful situations' should be avoided.

Attraction, applications, short listing and interviews

Attraction and advertising

Many employers find attracting talented disabled candidates to be problematic. Building the expectation of welcoming and fair treatment for disabled applicants into your employer brand is essential.

Publicise your commitment to employing people with disabilities in the careers information which you make available on your website or in recruitment packs. If you use testimonials, include contributions from disabled employees.

Ensure that the first contact with every candidate is positive.

Provide constructive feedback to all unsuccessful candidates including those with known disabilities.

Consider options to give disabled people experience of your organisation, such as offering work experience, temporary positions and using government programmes.

Disabled people do not necessarily read the disability press. However, it may be useful to advertise general messages in such publications to help build your reputation.

When advertising for specific positions:

- Use positive wording like, “we welcome disabled applicants” or “being part of Business Disability Forum’s membership, highlights our commitment to becoming a disability-smart organisation”.
- Provide a point of contact by telephone, email and textphone or mobile phone for people who are concerned about the recruitment process.
- State that applications will be accepted in alternative formats, e.g. by email or in audio format.
- If you use the disability ‘two ticks’ symbol, include this in your advert.

Ensure that the means by which you communicate with candidates are accessible to disabled candidates, and where relevant that your message is always accessible by alternative means. This should apply to information on specific positions as well as all the general information that goes into building your employer brand. Check too that your website is accessible, particularly if it is a primary recruitment channel.

Remember, it is unlawful for employers to place or have placed on their behalf advertisements, which might be discriminatory, e.g. an advertisement stating that the post is not suitable for people with certain disabilities, or where it appears that reasonable adjustments will not be provided, e.g. requiring an applicant to have a driving license when travel could be undertaken by other means.

Application forms

Application forms are popular with employers because they are generic and allow easier comparison between applicants. However, this drive for uniformity can disadvantage people who may well be excellent candidates but do not have standard educational qualifications or who have gaps in their work history.

While some disabled people may have had less formal education and spent time out of work for rehabilitation, they may well have other experience and skills to bring to the workplace.

If you do use application forms:

- Avoid making application and online registration forms overly long and complicated, as this makes it difficult for some people to apply and may particularly disadvantage those disabled people who take longer to fill out forms.

If you are unable to change complex forms, help people to complete them (for example, by providing guidance on how to complete them) and be innovative in offering ways of getting round the barriers they represent.

Ensure every question is relevant to the position. Clearly mark which information is mandatory and which optional.

Managing recruitment

If you use standard application forms that request information which may not be relevant to a specific position, ensure this information does not influence any decision to offer an interview or employment.

In addition, state that it is a standard form and make it clear you will only take into account those questions which are relevant to the particular position.

Allow space for the applicant to give details of experience they have gained outside the workplace.

Use simple straightforward language. This will help everyone, especially those with cognitive impairments, learning difficulties and those who have English as a second language.

Ensure any online recruitment process is accessible to disabled candidates.

When providing online application forms ensure the applicant can see what the application form involves before they begin and what information they will need to provide. If possible give an estimate of how long the form will take to complete. The applicant should be able to print off the form to help them to prepare their answers and be able to save the form and return to it later. Beware in particular online recruitment processes which 'time out' if the person is taking too long to complete the form.

Applicants should have the option to return the form in a different format if this is easier for them, e.g. paper format or by email. This is both best practice and might be a requirement under the Equality Act 2010.

If the applicant can apply in a variety of formats, it may be reasonable to specify the one you would prefer to receive and will respond in, for example, email rather than Braille.

Asking for information on disability

The Equality Act 2010 makes it unlawful for employers to ask applicants general questions about their health, medical history or disability prior to making an offer of employment. This includes asking applicants to complete a standardised medical questionnaire that asks questions about past and current illnesses, injuries, treatment or medication, e.g. anti depressants.

Employers who ask questions about past sickness absence on application forms or in references from previous employers requested prior to a job offer may also be acting unlawfully as this could be interpreted as asking questions about health or disability.

What is still lawful?

Employers can ask applicants if they need any reasonable adjustments for the application process or interview.

Employers can ask applicants how they will carry out any intrinsic elements of the job and if there are any limitations on them carrying out such duties. For example, employers can ask applicants for a job as a driver if there are any health restrictions on their ability to drive.

Employers can ask successful candidates health related questions so that any necessary reasonable adjustments can be made after a job offer has been made.

Employers can ask questions about disability for equal opportunities monitoring purposes and in order to take positive action, for example, the two ticks symbol under which interviews are guaranteed to disabled applicants who meet the essential criteria for a post.

Enforcement

The Equality and Human Rights Commission (EHRC) can take enforcement action against any employer who does ask questions about health or disability prior to the offer of a job. Employers found guilty of discrimination will be required to draw up an action plan, overseen by the EHRC. Failure to comply could result in a £5,000 fine.

In addition, a job applicant who believes that they suffered a detriment for example by not being appointed because of questions they were asked about their health or medical history may use the questions asked as evidence of disability discrimination in a tribunal claim. It will then be for the employer to prove that the answers to these questions did not influence the decision not to appoint the applicant.

Legal case study – Cheltenham Borough Council v Laird

In the case of Cheltenham Borough Council v Laird Cheltenham Borough Council sued their former Director, Christine Laird for fraudulent or negligent misrepresentation for failing to tell them about a history of depression in a pre-employment medical questionnaire.

Mrs Laird was employed as a Managing Director for the Council in 2002. Mrs. Laird's answered a number of questions on the pre-employment questionnaire including:

- Do you normally enjoy good health? She answered "Yes".
- Do you have either a physical and/or mental impairment? She answered "No".
- Have you any ongoing condition that would affect your employment? She answered "No – nb I get occasional migraine but this does not affect my ability to work or usually require time off from work".

After starting work she was involved in a number of disputes in particular with the Council leader which eventually led to her going off sick from June 2004 until 2005 when she took early ill-

health retirement. The Council later discovered the Mrs Laird had had periods of depression dating back to 1997. It brought proceedings against her in the High Court for fraudulent or negligent misrepresentation on the grounds that she had concealed her medical history during the recruitment process and it claimed nearly one million pounds in damages.

The Council was unsuccessful because the High Court held that even if Mrs Laird's answers were false they were not made fraudulently or negligently. The Court said that it must ask itself how a reasonable person in Mrs Laird's position would construe the questions rather than how a medical professional would interpret them.

Managing recruitment

In relation to the first question the Court accepted that a reasonable person in Mrs Laird's position was likely to say that she normally enjoyed good health. Mrs Laird had depression only for limited periods prior to 2002 and this was not her 'normal' state of health. She had not been depressed for the majority of the time and had only had about three months of depression-related absences during her working life.

The Court decided that a reasonable person would interpret the second question as referring to an ongoing physical or mental condition. At the time when she completed the questionnaire it was reasonable for Mrs Laird to consider herself as not having such a condition.

The third question was more difficult. The Court found that she had a vulnerability to depression and that it was this vulnerability that was ongoing, not the depression itself and she was not depressed when she completed the questionnaire. It concluded that a reasonable person might not have regarded this as an 'ongoing' medical condition that would affect her employment.

Mrs Laird's answers in the medical questionnaire were not therefore false and that she had not 'wilfully' meaning deliberately or at least recklessly withheld information from the Council.

This case highlights the pitfalls of using pre-employment medical questionnaires. These questionnaires rarely elicit useful information and often put talented people off applying to an employer who they fear will use the information to discriminate against them.

Ill health, disability or even sickness absences in the past are not necessarily an indicator of future health or attendance. It is for this reason that the Equality Act 2010 now makes it unlawful for employers to ask general questions about an applicant's health history prior to employment and so an employer can no longer ask the questions asked of Ms Laird in this case prior to a job offer .

The aim is to help employers concentrate on the person's actual abilities rather than making assumptions based on past ill health. Questions must be limited to the applicant's ability to do the job for which they are applying and any reasonable adjustments they might need.

Asking about adjustments

On the application form, do not ask:

- 'Do you consider yourself to have a disability?'

This is unlawful and so such questions should only be asked on a separate equal opportunity monitoring form as part of a monitoring process, or to establish if someone would like to apply through the 'two ticks' scheme.

Remember that even on monitoring forms candidates may not want to tell an employer about their disability for a variety of reasons. They may fear discrimination, think it is irrelevant or they may not even consider themselves to be disabled. Do not make answering questions on monitoring forms mandatory or allow candidates to tick a 'prefer not to say' option.

Do say on application forms: "Let us know if you need us to make any adjustments during the recruitment process. If you wish to discuss any concerns about the application process, please contact..."

Include details about the process and examples of the types of adjustments which can be made at each stage. This will help disabled people to anticipate whether they need adjustments before they come for an interview or an assessment.

For example, if you use pre-interview assessment tests then include an explanation of these tests and the types of adjustments which can be made for applicants with, for example, dyslexia or visual impairments.

Again, mention if you use the 'Two Ticks' symbol and offer guaranteed interviews so that a candidate can let you know they would qualify for this.

Record all information gathered for the purposes of reasonable adjustments or monitoring separately from the main body of the application form.

Remember also not to ask:

- 'How many sick days have you taken in the last year?'

Avoid questions about past sickness absence as this could be interpreted as asking questions about health or disability which is unlawful. Past sickness absence does not predict future absence. To reject someone due to the number of days absent could be discriminatory if the reason for the time off was disability-related.

E-recruitment

E-recruitment, or online recruitment, is an increasingly important channel for employers. It is fast and convenient and enables jobseekers to find out about and apply for many more jobs. When done well it cuts costs and simplifies the process for human resources, recruitment and line managers.

Yet, the processes which many companies use exclude disabled people.

1.3 million disabled people in the UK and an estimated 91.5 million worldwide are excluded by inaccessible and badly designed e-recruitment websites.

Many more, up to 386 million people worldwide (including 6.8 million disabled people of working age in Britain), can be excluded by discriminatory e-recruitment processes, including CV sorting, discriminatory evaluation and inaccessible html email (often containing web links).

Some of the key areas to address:

- Ensure your website, as well as any job boards and other websites you use, is accessible to disabled people.
- Ensure that your careers pages include welcoming messages and demonstrate your commitment to employing disabled people.
- If you use sorting technology ensure that you are not discriminating. For example, online applications may not allow spell checks to be used. To sift out applicants who have made a certain number of mistakes could discriminate against an applicant with dyslexia who, once appointed, would have access to a spell check facility.
- If you use online tests and assessment ensure that these are flexible, accessible and can be adjusted for individuals with different impairments.
- Ensure online communication, including html email, is accessible to disabled people.

Managing recruitment

- Ensure that automated systems are flexible and that you can still deliver reasonable adjustments.
- Ensure that your standard diversity and equal opportunities policies are used in developing your e-channel.

If you offer job alerts or the opportunity to join talent pools for unsuccessful candidates or applicants, then ensure that these processes are as accessible as possible, and that you offer these services via alternative means in order to avoid treating disabled candidates less favourably.

Content has been removed for sample purposes. Pages 19 to 57 are available in the full booklet.

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