

Recruitment: how to stay within the law

Unemployment rates remain high, but the Chartered Institute of Personnel and Development (CIPD) reports that more private firms are planning to recruit staff in 2010 than last year.

If you are thinking of recruiting in the near future then you should be aware that changes to various parts of discrimination law in the past five years makes it an offence not only to discriminate against employees, but people who are interviewed for jobs. In fact discrimination law applies to every part of the recruitment process from job advertisement through to candidate selection to interview and offer/rejection.

Here is a reminder of the criteria under which it is illegal to discriminate:

- age
- gender
- pregnancy
- married or civil partner status
- colour, race, nationality, ethnic origins and national origins
- religion or belief
- sexual orientation
- disability

Employers are recommended to document the recruitment process to ensure objective, consistent and structured decision-making. Equally, an employer must always be able to justify their decision in recruiting a particular person in case of an application to an employment tribunal. If the issue reached a tribunal, you would have to provide evidence showing how and why you reached your decision, and tribunals place more weight on documented evidence than on oral witness.

Best practice

First of all, do you have an equality policy? If not then it is time to create one. Please refer to this page to [equality and diversity policies](#). For detailed guidance, [download the delivering equality and diversity booklet from the Acas website - Opens in a new window](#).

Now you have created an equality policy you need to draw up some documents in accordance with the principles of equality:

- **Job advertisement.** It is unlawful for a job advertisement to specify that the applicant must be of a particular gender, race, etc - unless being of that gender, race, etc is a genuine occupational requirement/qualification.*
- **Job specification.** Identify the qualifications, skills and experience required for the job, eg NVQ level or equivalent, customer handling with experience of difficult situations.
- **Person specification.** Identify the personal qualities required for the job, eg focus, persistence, determination. You can set out any genuine occupational requirements or

qualifications, but do not ask for any that are unrelated to the job. For example it would be discriminatory to ask for good written English, where this was not required to do the job.

- **Application forms.** If you use application forms, you should only ask for the minimum of personal details. However, there may be certain information you need to ask for in order to avoid discrimination during the selection process. For example, you should ask applicants to indicate if they have any special requirements should they be shortlisted for interview.

Structured process

With the above in place you can proceed to the selection process, taking care to document each step. You will find this approach aids objective decision-making.

- **Short list creation.** You should document how selections were made in accordance with the objective criteria listed in the job and person descriptions.
- **Interview notes.** Keep a record of how the interviewees performed in relation to questions based on the objective criteria. When interviewing people for a job there are certain questions you should not ask, such as whether a candidate is married, is a partner in a same-sex civil partnership or plans to have children.
- **Selection decision.** Note down how the successful candidate was selected in relation to the objective criteria. For an overview of current best practice in relation to discrimination, read our guides to [equality and diversity](#).

Planned future legislation

The Equality Act 2010 (previously referred to as the Equality Bill) comes into force October 2010.

[Find out more about the Equality Act on the Equality and Human Rights commission website - Opens in a new window.](#)

* In some circumstances, it may be possible to state that being of a particular sex, race, religion/belief, age or sexual orientation is a genuine occupational qualification or requirement for the job. For more detailed guidance on this, and preventing discrimination during the recruitment process generally, read our page on [discrimination during recruitment](#).

.....