

# 1. What equality law means for you as an employer: when you recruit someone to work for you.

Equality Act 2010 Guidance for employers.  
**Vol. 1 of 7.**

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# Introduction

This guide is one of a series written by the Equality and Human Rights Commission to explain what you must do to meet the requirements of equality law. These guides will support the introduction of the Equality Act 2010. This Act brings together lots of different equality laws, many of which we have had for a long time. By doing this, the Act makes equality law simpler and easier to understand.

There are seven guides giving advice on your responsibilities under equality law as someone who has other people working for you whether they are employees or in another legal relationship to you. The guides look at the following work situations:

1. When you recruit someone to work for you
2. Working hours and time off
3. Pay and benefits
4. Career development – training, development, promotion and transfer
5. Managing people
6. Dismissal, redundancy, retirement and after someone's left
7. Good practice: equality policies, equality training and monitoring

## Other guides and alternative formats

We have also produced:

- A separate series of guides which explain what equality law means for you if you are providing services, carrying out public functions or running an association.
- Different guides for individual people who are working or using services and who want to know their rights to equality.

If you require this guide in an alternative format and/or language please contact the relevant helpline to discuss your needs.

### **England**

Equality and Human Rights Commission Helpline

FREEPOST RRLG-GHUX-CTR

Arndale House, Arndale Centre, Manchester M4 3AQ

Telephone: 0845 604 6610

Textphone: 0845 604 6620

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### **Scotland**

Equality and Human Rights Commission Helpline

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The Optima Building, 58 Robertson Street, Glasgow G2 8DU

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### **Wales**

Equality and Human Rights Commission Helpline

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3rd Floor, 3 Callaghan Square, Cardiff CF10 5BT

Telephone: 0845 604 8810

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**[www.equalityhumanrights.com](http://www.equalityhumanrights.com)**

## The legal status of this guidance

This guidance applies to England, Scotland and Wales. It has been aligned with the Codes of Practice on Employment and on Equal Pay. Following this guidance should have the same effect as following the Codes. In other words, if a person or an organisation who has duties under the Equality Act 2010's provisions on employment and other work situations does what this guidance says they must do, it may help them to avoid an adverse decision by a court in proceedings brought under the Equality Act 2010.

This guide is based on equality law as it is at 1 October 2010. Any future changes in the law will be reflected in further editions.

This guide was last updated in July 2011. You should check with the Equality and Human Rights Commission if it has been replaced by a more recent version.



# 1. What equality law means for you as an employer: when you recruit someone to work for you

## What's in this guide

If you are recruiting someone to work for you, equality law applies to you.

Equality law applies:

- whatever the size of your organisation
- whatever sector you work in
- whether you are taking on your first worker or your hundred and first
- whether or not you use any formal processes like application forms, shortlisting or interviewing.

This guide tells you how you can avoid all the different types of unlawful discrimination. It recognises that smaller and larger employers may operate with different levels of formality, but makes it clear how equality law applies to everyone, and what this means for the way you (and anyone who already works for you) must do things.

It covers the following situations and subjects (we tell you what any unusual words mean as we go along):

- Thinking about what the job involves and what skills, qualities and experience a person will need to do it
- Job adverts
- Application forms and CVs
- Shortlisting applicants to meet or interview
- Interviews, meetings and tests
- Recruiting women who are pregnant or on maternity leave
- Equality good practice.

## What else is in this guide

This guide also contains the following sections, which are similar in each guide in the series, and contain information you are likely to need to understand what we tell you about recruitment:

- Information about when you are responsible for what other people do, such as your employees.
- Information about making reasonable adjustments to remove barriers for disabled people who work for you or apply for a job with you.
- Advice on what to do if someone says they've been discriminated against.
- A Glossary containing a list of words and key ideas you need to understand this guide – all words highlighted in **bold** are in this list. They are highlighted the first time they are used in each section and sometimes on subsequent occasions.
- Information on where to find more advice and support.

Throughout the text, we give you some ideas on what you can do if you want to follow equality good practice. While good practice may mean doing more than equality law says you must do, many employers find it useful in recruiting talented people to their workforce and managing them well so they want to stay, which can save you money in the long run. Sometimes equality law itself doesn't tell you exactly how to do what it says you must do, and you can use our good practice tips to help you.

## Making sure you know what equality law says you must do as an employer

### Are you an employer?

This guide calls you an **employer** if you are the person making decisions about what happens in a work situation. Most situations are covered, even if you don't give your worker a written **contract of employment** or if they are a **contract worker** rather than a **worker** directly employed by you. Recruiting people to other positions like trainees, apprentices and business partners is also covered. Sometimes, equality law only applies to particular types of worker, such as employees, and we make it clear if this is the case.

## *Protected characteristics*

Make sure you know what is meant by:

- **age**
- **disability**
- **gender reassignment**
- **marriage and civil partnership**
- **pregnancy and maternity**
- **race**
- **religion or belief**
- **sex**
- **sexual orientation.**

These are known as protected characteristics.

## *What is unlawful discrimination?*

Unlawful discrimination can take a number of different forms:

- You must not treat a job applicant worse than another job applicant because of a protected characteristic (this is called **direct discrimination**).

For example:

- An employer does not interview a job applicant because of the applicant's ethnic background.
- An employer says in a job advert 'this job is unsuitable for disabled people'.

- You must not do something which has (or would have) a worse impact on a job applicant and on other people who share a particular protected characteristic than on people who do not have that characteristic. Unless you can show that what you have done, or intend to do, is **objectively justified**, this will be **indirect discrimination**. 'Doing something' can include making a decision, or applying a rule or way of doing things.

For example:

A job involves travelling to lots of different places to see clients. An employer says that, to get the job, the successful applicant has to be able to drive. This may stop some disabled people applying if they cannot drive. But there may be other perfectly good ways of getting from one appointment to another, which disabled people who cannot themselves drive could use. So the employer needs to show that a requirement to be able to drive is objectively justified, or they may be discriminating unlawfully against people who cannot drive because of their disability.

- You must not treat a disabled job applicant **unfavourably** because of something connected to their disability where you cannot show that what you are doing is **objectively justified**. This only applies if you know or could reasonably have been expected to know that the applicant is a disabled person. This is called **discrimination arising from disability**.

For example:

An employer tells a visually impaired person who uses an assistance dog that they are unsuitable for a job because the employer is nervous of dogs and would not allow it in the office. Unless the employer can objectively justify what they have done, this is likely to be discrimination arising from disability. The refusal to consider the visually impaired person for the job is unfavourable treatment which is because of something connected to their disability (their use of an assistance dog). It may also be a failure to make a reasonable adjustment.

- You must not treat a job applicant worse than another job applicant because they are **associated with** a person who has a protected characteristic.

For example:

An employer does not give someone the job, even though they are the best-qualified person, just because the applicant tells the employer they have a disabled partner. This is probably direct discrimination because of disability

by association. Direct discrimination cannot be justified, whatever the employer's motive.

- You must not treat a job applicant worse than another job applicant because you incorrectly think they have a protected characteristic (**perception**).

For example:

An employer does not give an applicant the job, even though they are the best-qualified person, because the employer incorrectly thinks the applicant is gay. This is still direct discrimination because of sexual orientation.

- You must not treat a job applicant badly or **victimise** them because they have complained about discrimination or helped someone else complain or have done anything to uphold their own or someone else's equality law rights.

For example:

An employer does not shortlist a person for interview, even though they are well-qualified for the job, because last year the job applicant said they thought the employer had discriminated against them in not shortlisting them for another job.

- You must not **harass** a job applicant.

For example:

An employer makes a job applicant feel humiliated by telling jokes about their religion or belief during the interview. This may amount to harassment.

In addition, to make sure that a disabled person has the same access, as far as is reasonable, to everything that is involved in getting and doing a job as a non-disabled person, you must make **reasonable adjustments**.

If an applicant asks for information about the job and the application form (if there is one) in an **alternative format** which they require because they are a disabled person then you must provide this, so long as it is a reasonable adjustment – and it is likely to be.

If an applicant needs reasonable adjustments to participate in any interview or assessment process, then you must make them.

When you assess a disabled job applicant's suitability for the job, you must take account of any reasonable adjustments which are needed to enable them to do the job.

If, after taking reasonable adjustments into account, the disabled applicant would not be the best person for the job, you do not have to offer it to them.

But if they would be the best person with the reasonable adjustments in place, you must offer them the job. In any event, it would make sense for you to do this, as you want the best person for the job.

You can read more about making reasonable adjustments to remove barriers for disabled people in Chapter 3.

We also highlight particular issues in each section of this guide that you may need to think about when you are recruiting disabled people.

## **Questions about health or disability**

Except in very restricted circumstances or for very restricted purposes, you are not allowed to ask any job applicant about their health or any disability until the person has been:

- offered a job either outright or on a conditional basis, or
- included in a pool of successful candidates to be offered a job when a position becomes available (for example, if an employer is opening a new workplace or expects to have multiple vacancies for the same role but doesn't want to recruit separately for each one).

This includes asking such a question as part of the application process or during an interview. It also includes sending them a questionnaire about their health for them to fill in before you have offered them a job. Questions relating to previous sickness absence count as questions that relate to health or disability.

No-one else can ask these questions on your behalf either. So you cannot refer an applicant to an **occupational health practitioner** or ask an applicant to fill in a questionnaire provided by an occupational health practitioner before the offer of a job is made (or before inclusion in a pool of successful applicants) except in very limited circumstances, which are explained next.

The point of stopping employers asking questions about health or disability is to make sure that all job applicants are looked at properly to see if they can do the job in question, and not ruled out just because of issues related to or arising from their health or disability, such as sickness absence, which may well say nothing about whether they can do the job now.

You can ask questions once you have made a job offer or included someone in a group of successful candidates. At that stage, you could make sure that someone's health or disability would not prevent them from doing the job. But you must consider whether there are reasonable adjustments that would enable them to do the job.

You can read more about making reasonable adjustments to remove barriers for disabled people in Chapter 3.

## **What happens if I ask questions about health or disability?**

The Equality and Human Rights Commission can take legal action against you if you ask job applicants any health- or disability-related questions that are not allowed by equality law.

Also, a disabled job applicant can bring a claim against you if:

- you asked health- or disability-related questions of a kind that are not allowed, and
- they believe there has been unlawful discrimination as a result of the information that they gave (or failed to give) when answering such questions.

In such a claim, the fact that you asked these questions will shift the burden of proof, so that it will be for you to prove that you did not discriminate against the worker when, for example, you did not offer them the job.

## **When you are allowed to ask questions about health or disability**

You can ask questions about health or disability when:

- You are asking the questions to find out if any applicant needs reasonable adjustments for the recruitment process, such as for an assessment or an interview.

For example:

An application form states: 'Please contact us if you need the application form in an alternative format or if you need any adjustments for the interview'. This is allowed.

You can read more about reasonable adjustments during the application process later in this guide.

- You are asking the questions to find out if a person (whether they are a disabled person or not) can take part in an assessment as part of the recruitment process, including questions about reasonable adjustments for this purpose.

For example:

An employer is recruiting play workers for an outdoor activity centre and wants to hold a practical test for applicants as part of the recruitment process. It asks a question about health in order to ensure that applicants who are not able to undertake the test (for example, because they are pregnant or have an injury) are not required to take the test. This is allowed.

- You are asking the questions for **monitoring** purposes to check the diversity of applicants. You can read more about monitoring later in this guide.
- You want to make sure that an applicant who is a disabled person can benefit from any measures aimed at improving disabled people's employment rates. For example, the **guaranteed interview scheme**. Make it clear to job applicants that this is why you are asking the question.
- You are asking the question because having a specific impairment is an **occupational requirement** for a particular job.

For example:

An employer wants to recruit a Deafblind project worker who has personal experience of Deafblindness. This is an occupational requirement of the job and the job advert states this. The employer can ask on the application form or at interview about the applicant's disability.

- Where the questions relate to a requirement to vet applicants for the purposes of **national security**.
- Where the question relates to a person's ability to carry out a function that is intrinsic (or absolutely fundamental) to that job. Where a health- or disability-related question would mean you would know if a person can carry out that function with reasonable adjustments in place, then you can ask the question.

For example:

A construction company is recruiting scaffolders. The company can ask about health or disability on the application form or at interview if the questions relate specifically to an applicant's ability to climb ladders and scaffolding to a significant height. The ability to climb ladders and scaffolding is a function that is intrinsic or fundamental to the job.

In practice, even if a function is intrinsic to the job, you should ask a question about a disabled person's ability to do the job with reasonable adjustments in place. There will



therefore be very few situations where a question about a person's health or disability needs to be asked.

Most of the time, whether on an application form or during an interview, you can ask a question about whether someone has the relevant skills, qualities or experience to do the job, not about their health or about any disability they may have.

For example:

An employer is recruiting a person as a cycle courier. They ask applicants to send in a CV setting out their relevant experience and a covering letter saying why they would be suitable for the job. The employer will score candidates on their experience of and enthusiasm for cycling. It is not necessary to ask applicants questions about health or disability. If the employer considers a health check is necessary, for example, for insurance purposes, this can be carried out once an applicant has been offered the job, and the job offer can be made conditional on the health check.

If a disabled job applicant voluntarily discloses information about their health or disability before you have made any job offer, do not get drawn into a conversation which is outside the exceptions set out above. For example, you could ask a follow-up question to find out what reasonable adjustments were necessary to enable the candidate to carry out an intrinsic function of the job. You should explain to the candidate that it is not appropriate or permitted for you to get into a general conversation about their disability or health record, but you can discuss this particular aspect.

## ***Situations where equality law is different***

Sometimes there are situations where equality law applies differently. This guide refers to these as **exceptions**.

There are several exceptions which relate to recruitment and which apply to all employers.

There are others that only apply to particular types of employer.

We only list the exceptions that apply to the situations covered in this guide. There are more exceptions which apply in other situations, for example, when you are selecting someone for redundancy. These are explained in the relevant guide in the series.

In addition to these exceptions, equality law allows you to:

- Treat disabled people better than non-disabled people.
- Use voluntary **positive action**. You can read more about positive action during recruitment later in this guide.

## Age

**Age** is different from other protected characteristics. If you can show that it is **objectively justified**, you can make a decision based on someone's age, even if this would otherwise be direct discrimination.

However, it is very unusual to be able to objectively justify direct age discrimination of this kind. Be careful not to use stereotypes about a person's age to make a judgement about their fitness or ability to do a job.

For example:

- An employer rejects an applicant for a management job because they are 25 years old and much younger than the people they would be managing.
- An employer only makes people over 50 do an aptitude test, because the employer believes that people over 50 do not have the mental agility to learn to do a job.

These are both examples of age discrimination which an employer would find it very difficult to objectively justify.

## Occupational requirements

If you can show that a particular protected characteristic is central to a particular job, you can insist that only someone who has that particular protected characteristic is suitable for the job. This would be an 'occupational requirement'.

For example:

A women's refuge may want to say that it should be able to employ only women as counsellors. Its client base is only women who are experiencing domestic violence committed by men. This would probably be a genuine occupational requirement.

## Obeying another law

You can take into account a protected characteristic where not doing this would mean you broke another law.

For example:

A driving school must reject a 19-year-old who applies for a job as a driving instructor because to offer them a job – even if they are otherwise the best candidate – would involve breaking the law because a driving instructor must be aged at least 21.

## National security

You can take a person's protected characteristic into account if there is a need to safeguard national security, and the discrimination is **proportionate**.

## Exceptions that only apply to some employers

There are also exceptions that only apply to some employers:

- If you are a **religion or belief organisation**, you may be able to say that a job requires a person doing the job to hold a particular religion or belief if, having regard to the nature or context of the job, this is an occupational requirement and it is **objectively justified**.

For example:

A Humanist organisation which promotes Humanist philosophy and principles would probably be able to apply an occupational requirement for its chief executive to be a Humanist.

- If the job is for the purposes of an organised religion, you may be able to say that a job or role requires a person to have or not have a particular protected characteristic or to behave or not behave in a particular way.

If:

- a job or role exists for the purposes of an organised religion, such as being a Minister or otherwise promoting or representing the religion, and
- because of the nature or context of the employment, it is necessary to avoid conflict with the strongly held religious convictions of a significant number of the religion's followers or to conform to the doctrines of the religion by applying a requirement to the job or role,

you may be able to refuse to employ a person because:

- they are male or female
- they are a transsexual person
- they are married or in a civil partnership, including taking into account who they are married to or in a civil partnership with (such as someone who marries a divorced person whose former spouse is still alive)
- they manifest a particular sexual orientation, for example, a gay or lesbian or bisexual person who is in a relationship with a same-sex partner.

This exception should only be used for a limited number of posts, eg ministers of religion, and a small number of posts outside the clergy, eg those which exist to promote or represent the religion. The requirement must be a **proportionate** way of meeting the aims stated above.

- If you are an **employment service provider**, you may be able to say that a person must have a particular protected characteristic to do **vocational training**, if the training leads to work for which having that characteristic is an occupational requirement.
- If you are an **educational establishment** like a school or college, you may be able to say that someone has to be of a particular religion or belief, or must be a woman.
- If you are recruiting to the civil, diplomatic, armed or security and intelligence services and some other public bodies, you can specify what nationality a person has to be.
- If you are recruiting for service in the armed forces, you may be able to exclude women and transsexual people if this is a proportionate way to ensure the combat effectiveness of the armed forces. In addition, age and disability are, in effect, not protected characteristics in relation to service in the armed forces. Disability can also be a reason to refuse someone work experience in the armed forces.

There are more details of these exceptions in the Glossary.

## Good practice tips: using exceptions

If someone disagrees with you and brings an Employment Tribunal claim, you may need to show why you thought an exception applied. When you're making the decision:

- Look at the exceptions to see if they might apply to your situation or organisation.
- If you decide an exception does apply, keep a note of why you decided this.
- Tell people which exception you are using, for example, through the job advert if you use one to tell people about the recruitment.

## What's next in this guide

The next part of this guide tells you more about how you can avoid all the different types of unlawful discrimination in the following situations:

- Thinking about what the job involves and what skills, qualities and experience a person will need to do it
- Job adverts
- Application forms and CVs
- Shortlisting applicants to meet or interview
- Interviews, meetings and tests
- Recruiting women who are pregnant or on maternity leave
- Equality good practice
  - Using positive action to recruit a wider range of people
  - Using monitoring forms during recruitment.

# Thinking about what the job involves and what skills, qualities and experience a person will need to do it

Before you recruit a new worker or someone to replace a person who is leaving or has left, you will be thinking about what the job involves and the skills, qualities and experience a person will need to do it.

## *Avoid direct discrimination*

You must avoid direct discrimination against people because of their protected characteristics in what you say or write about the job.

For example:

An employer tells a female applicant on the phone that they are unsuitable for a driving job because the job has always been done by a man before and that is what they are looking for this time.

Direct discrimination cannot be **objectively justified** for any protected characteristic except age. But don't take this as meaning that equality law generally allows age discrimination or stereotyping.

For example:

An employer says in a person specification that the successful candidate 'must have youthful enthusiasm'. This would probably be direct discrimination because of age which the employer could not show to be **objectively justified**. What is actually needed is enthusiasm, which can be just as present in someone who the employer does not see as young, so the employer should not include the stereotype in the person specification.

## *Avoid requirements you cannot objectively justify*

Of course, you will need the successful applicant to have particular skills, experience or qualifications to do the job.

If requirements like these are **objectively justified**, you can include them in what you say or write about the job and the person you are looking for, even if they exclude some people (for example, because people with a particular protected characteristic are less likely to be able to meet the requirements).

But if the requirements are *not* objectively justified to do the job, then using them might be unlawful indirect discrimination.

For example:

An employer specifies that a job must be done on a full-time basis without having looked at whether it might be suitable for part-time work or jobsharing. The requirement to work full-time would put women at a disadvantage compared to men because more women work flexibly because of childcare responsibilities. Unless the employer can objectively justify the requirement to work full-time, this is likely to be indirect discrimination because of sex.

## ***Recruiting disabled people***

Any requirements about what the job involves, or about the person who you want to recruit, should be related to and needed as part of the job. The inclusion of unnecessary or minor requirements could discriminate against disabled people, for example, by stopping them applying.

For example:

An employer states that they want to recruit someone who is 'active and energetic' but in fact the job needs someone to work at a desk. This might stop some disabled people from applying if, for example, they have a mobility impairment (although, of course, many people with a mobility impairment are very active and energetic). This would be the wrong approach for an employer to take.

You should also think about whether specific qualifications are actually required or whether what is really needed is a particular skill level or task.

For example:

An employer specifies that a driving licence is required for a job which involves limited travel. An applicant for the job has no driving licence because of the effects of cerebral palsy. They are otherwise the best applicant for that job, they could easily and cheaply do the travelling involved other than by driving and it is likely to be a reasonable adjustment for the employer to let them do so. It would probably be discriminatory to insist on the specification and reject their application only because they have no driving licence.

## Good practice tip for avoiding discrimination

Stick to making a list of what the job is designed to get done. Try not to make assumptions about who will be able to do it. Making assumptions might mean you exclude people just because of their protected characteristics, which would be the wrong approach.

Remember that you must make reasonable adjustments for disabled applicants during the recruitment process and must provide and accept information in alternative formats, where this would be a reasonable adjustment.

## Equality good practice: what you can do if you want to do more than equality law requires

- Use a job description and person specification – and other more ‘formal’ processes like an application form, because:
  - this can make it easier for you to make sure you are not discriminating against people
  - they help you to focus on what the job involves and the skills, experience and qualifications someone needs to do the job well
  - you are less likely to get distracted by irrelevant factors, such as someone’s protected characteristics
  - this makes it more likely you’ll get the right person for the job – the person who can do it best – and also help you avoid tribunal claims.
- If you decide to use a job description and person specification, make it clear what the job involves and the skills, qualities and experience the employer is looking for. Write in plain language.
- In the job description (which says what the person who gets the job will be doing), avoid unnecessary tasks or overstated responsibilities or jargon, acronyms and abbreviations, which may exclude people who don’t understand what they mean – unless understanding special words is a necessary part of the job.



- If a disabled person applies for the job, the law requires you to make **reasonable adjustments** to remove barriers that non-disabled people would not face in being able to do the job. This will be easier if you:
  - write the job description in a way that lists what the job is for and the results which the person doing it should produce
  - try not to focus on how the job will be done, as reasonable adjustments might enable a disabled person to do the job in a different way, but producing just as good results.
- In the person specification (which lists the skills, qualities and experience the person who gets the job should ideally have), don't overstate the skills, qualities or experience someone needs to do the job, and make it clear whether the skills, qualities and experience needed for the job are essential or just desirable.

## Job adverts

You do not have to advertise a job vacancy in a particular way or at all.

But if you don't advertise at all or you advertise in a way that won't reach people with a particular protected characteristic, this might in some situations lead to indirect discrimination, unless you can **objectively justify** your approach.

For example:

A large employer recruits workers to driving jobs through word of mouth. This results in everyone who has a driving job being a member of the same few families or a friend of these families. All the family members and their friends are white, despite the workplace being in an area of high ethnic minority population. Unless the employer can objectively justify the way drivers are recruited, this is likely to be indirect discrimination because of race.

If you do advertise, whether that's on a notice board, in a shop window, in a newspaper or on a website, or by using a recruitment agency, you must not give the impression you intend to discriminate.

For example:

An employer advertises for a 'waitress'; to avoid direct discrimination because of sex, they should advertise for 'waiting staff' or 'waiter or waitress'.

This does not apply if any of the exceptions listed at pages 12–16 apply in which case you could mention a particular protected characteristic in the job advertisement.

## **Recruiting disabled people**

If you do advertise a job, you must not state or imply that a job is unsuitable for disabled people generally or a disabled person with a particular type of impairment.

For example:

An employer is advertising for somebody to deliver parcels on their own; the advertisement states that the successful applicant will have to drive and be able to lift the parcels. The need to drive is clearly required for the job. Although it may exclude some disabled people, eg those with a sight impairment, it would not exclude all disabled people. It would therefore be wrong – and discriminatory – to put ‘unsuitable for disabled people’ in the job advert.

You must not state or imply that reasonable adjustments will not be made for a disabled person.

For example:

When a school is advertising for a teacher to work in a building on two floors which does not have a lift, they must not state that because of this the job would not be suitable ‘for a disabled person’. Instead, if they wish to address this issue in the advert, they could point out that the school is on two floors but that they would welcome applications from disabled people whatever their impairment and would make reasonable adjustments both at interview and on appointment for applicants with a mobility impairment. If the school interviews an applicant with a mobility impairment, it would be a reasonable adjustment to hold the interview somewhere with level access. If the successful applicant has a mobility impairment, a reasonable adjustment could be made to allow them to do their teaching on the ground floor and, if necessary, level access to the ground floor could be provided through the installation of a ramp if this did not already exist, provided these are reasonable adjustments.

If you want to, you can advertise a job as being open to disabled applicants only or you can say in an advert that you are encouraging disabled people to apply for a job. This is not unlawful discrimination against a non-disabled person. Equality law allows you to treat a disabled person better – or **more favourably** – than a non-disabled person. This can be done even if the disabled person is not at a specific disadvantage because of their disability in the particular situation. The reason the law was designed this way is to

recognise that generally disabled people face a lot of barriers to participating in work and other activities.

### Equality good practice: if you want to do more than equality law requires

- If you want to address under-representation or disadvantage in your workforce through 'positive action', you can use an advertisement to encourage applications from people with a particular characteristic. But you cannot specify that you only want someone with a particular characteristic or that only people with that characteristic need apply (unless you are applying an occupational requirement, which is different from positive action). When using positive action, you must still choose the successful applicant because they are the best person for the job, not just because of a protected characteristic. You can read more about **positive action** later in this guide.
- You could use a logo to show that you encourage applications from people with a particular protected characteristic, for example, if you are authorised to use the '**Two Ticks**' symbol to show that you want to encourage applications from disabled people.
- Or you could use a statement to show that you want to encourage anyone who has the necessary skills, qualities and experience to apply such as:
  - 'We welcome enquiries from everyone and value diversity in our workforce.'
  - 'We are willing to consider flexible working arrangements.'
- If you have an **equality policy**, you could mention this to tell people that your organisation wants to operate in a particular way.

## Application forms and CVs

You don't have to ask job applicants to fill in an application form or even to give you a CV or job history. But you're likely to want to find out what skills, qualities and experience they have which would make them the best person to do the job.

Regardless of how you get the information about someone, you must not use what they say to discriminate unlawfully against them. For example, do not reject applications because of a person's sex, race or another protected characteristic, which you have found out from the information given. This would be direct discrimination.

If you reject an application because of someone's age, you must be able to **objectively justify** this.

You are also not allowed to make **pre-employment enquiries** about a job applicant's disability or health record except in specific circumstances.

If you reject applications because you apply a requirement which has a worse impact on people with a particular protected characteristic, then unless you can **objectively justify** the requirement, this may be **indirect discrimination**.

For example:

An employer decides to reject applications from anyone who has had a career break. This would have a worse impact on some people who share a particular protected characteristic, such as women, who are more likely to have taken a break to have a family, and transsexual people, who have taken a break to undergo gender reassignment. Unless the employer can objectively justify the requirement for the successful applicant not to have had a career break, this is likely to be unlawful indirect discrimination.

If the applicant who is rejected for this reason is a disabled person, it may be **discrimination arising from disability**.

If you know, or could reasonably be expected to know that an applicant is disabled, and reject their application because of something connected with the person's disability, this will be unlawful **discrimination arising from disability** unless you can **objectively justify** your decision.

### Good practice tip for avoiding discrimination

Do not ask for personal details which you will not use to make a decision and which could allow for discrimination to take place – or may just make someone think that you're asking for it so you can discriminate, which puts you at risk of a tribunal claim. You are very unlikely to need this sort of information to decide who can do the job best.

For example:

- Questions on marital status or childcare arrangements.

But also, equality law places restrictions on the sorts of health- and disability-related questions you can ask before the point at which you offer a person a job.

Name and contact details are usually all you need by way of personal information at this stage (as opposed to information about someone's skills, qualities and experience). Other personal information, for example, date of birth or marital status for a pension scheme, can be asked in confidence once someone gets the job.

## *Recruiting disabled people*

If an applicant asks for information about the job and the application form (if you're using one) to be given to them in an alternative format which they require because they are a disabled person then you must provide this, so long as it is a reasonable adjustment – and it is likely to be. This could be information in large print, electronically or as an audio file. Everyone in your organisation who is involved in the recruitment should be told what they have to do.

For example:

A person applies for a job and asks for information in large print format because they have a visual impairment. An administrator dealing with this does not understand what they are being asked to do and is not aware of their own or their employer's duty to avoid discriminating against disabled people. She ignores the applicant's request and the applicant is unable to apply for the vacancy. This is a failure to comply with the duty to make reasonable adjustments.

If it is a reasonable adjustment to do so, you must be prepared to accept an application in an alternative format. However, the applicant will probably want to submit an application in a format which suits you as the employer. For example, they may usually use Braille to read and type but could send their application to you as a word processed document electronically.

## *Asking about health or disability*

In general, you must not ask a job applicant questions relating to health or disability. So don't ask on the application form or ask someone to say anything in a covering letter with a CV or in a letter of application or on a separate questionnaire (unless this is a **monitoring form**) about their health or disability.

Instead, ask whether someone has the relevant skills, qualities and experience to do the job, not about their health or about any disability they may have.

One of the exceptions to this rule is that you can ask a question to find out if a disabled person needs a **reasonable adjustment** during the recruitment process itself.

But don't ask for this information on the application form. Ask applicants to tell you this on a separate document or using a covering letter that does not contain any information relevant to deciding whether to take their application further.

Keep this information separate from the rest of the information an applicant gives you about themselves, whether this is on an application form or not. This will make sure that the information is not used to discriminate unlawfully against them, and that you will be able to show that it hasn't.

The easiest way to make sure the information about reasonable adjustments is not used in the wrong way – to exclude a disabled person from the application process – is to make sure the person or people deciding which applicants to take through to the next stage of the process don't see the information about reasonable adjustments before making their decision.

If you are making this decision by yourself (for example, if your organisation is very small), then you must be careful not to let your knowledge of the fact an applicant needs reasonable adjustments influence your decision whether to take them through to the next stage.

You only have to make adjustments if you know, or could be reasonably expected to know, that a disabled person has applied or may apply for the job. But you must do all that can reasonably be expected to find out whether this is the case and what, if any, adjustments an applicant requires.

For example:

When inviting job applicants for interview, an employer asks applicants to say if they have any disability-related requirements for interview and states that the employer will make reasonable adjustments. This is the right approach, so long as the employer does not then use any information the applicants give to discriminate against them.

Don't ask in a way that might be intrusive or that violates the disabled person's privacy or dignity.

Do not ask anything that is not about making reasonable adjustments to the application process, unless one of the exceptions listed at pages 12–16 applies.

Do not use what the person says about reasonable adjustments to make any other decisions that are part of the application process.

For example:

An employer asks a specific question when they invite job applicants for interview: 'Do you require any adjustments because of a disability?' and offers to answer any questions applicants have about the interview process to help them work out if they need to ask the employer for anything. The employer is also clear whether or not the interview will take place in a building with level access (i.e. if there are stairs, there are ramps or a lift) and if a hearing loop is available. This is the right sort of approach.

However, applicants do not have to respond to this request and, unless you could otherwise reasonably be expected to know that a job applicant is a disabled person, you will not be under a duty to make adjustments. However, if an applicant discloses at a later stage that they are a disabled person, or you could reasonably be expected to know that they are, you must then consider whether they need reasonable adjustments.

You can read more about making reasonable adjustments to remove barriers for disabled people in Chapter 3.

## Equality good practice: what you can do if you want to do more than equality law requires

- Using an application form which asks people to say how they can meet the requirements of the job will help you to focus on whether people can do the job or not, rather than their protected characteristics, and makes unlawful discrimination less likely. This will help you avoid tribunal claims.
- If you have drawn up a job description and person specification, use these to work out what you want to ask on the application form.
- Only ask for information that is relevant to the job. For example, unless it is really necessary for the job, do not ask for applicants' date of birth or for other dates – although you'll probably want to ask how long someone was in a particular job, and this is all right. But someone's age very rarely tells you whether they are the right person for the job or not.
- Consider asking applicants to put on a separate sheet all personal information from which you may be able to tell if they have a protected characteristic.
  - This is so that this information is not shown to the people choosing applicants. They can then focus completely on what each applicant says about how they meet the requirements of the job, rather than (even accidentally or subconsciously) taking account of irrelevant considerations such as someone's age, sex or ethnicity.
  - An exception to this would be if an employer had decided to use **positive action** in the recruitment for that job; if this is the reason for asking for particular information, this should be made clear on the form. Or you should ask applicants' permission to allow the people making the recruitment decisions to see their **monitoring form**.



- Consider allowing people to give information on experiences outside paid employment, or make it clear they can use these in answering the questions. This can help people whose protected characteristics have influenced their work history to show they have gained the skills you need in other ways.

For example:

- A woman who has taken several years out of paid employment while her children were very young has been the secretary of her local tenants' and residents' association. This has given her valuable skills in administration and co-ordination, and has meant she has kept her IT knowledge up-to-date. An employer does not take account of her unpaid experience but only focuses on her last paid job some years before. They do not gain an accurate picture of her skills, qualities and experience and miss out on recruiting a good employee.
- A disabled person applies for a job working at a community centre. The applicant does not have any formal qualifications or experience of paid work. However, the volunteering they have done for local charities means they have experience of organising meetings and contacting people to encourage them to take part in activities. An application form that asks about 'relevant experience, paid or unpaid' would highlight this in a way that a form that only asked about 'previous employment' would not.

## Shortlisting applicants to meet or interview

Shortlisting is when you decide who to meet or interview to discuss their job application. The meeting or interview could be face to face or by phone.

Equality law does not say that you have to meet someone or interview them before offering them a job.

But if you do decide to have a meeting or interview with one or more job applicants, then you must not unlawfully discriminate against a job applicant when you decide who to meet or interview.

Use the information earlier in this guide to make sure you know what equality law says you must do as an employer.

Even if you are using **positive action** measures during the recruitment process, you must not shortlist applicants who do not meet the standard you have set for deciding who to shortlist just because they have a particular protected characteristic if there are better qualified applicants without that protected characteristic. The only exception to this is if you are recruiting disabled people. This is explained below.

## Recruiting disabled people

Your organisation may have a **guaranteed interview scheme** for disabled people. In this case, if someone meets the minimum criteria for the job then you should shortlist them for interview.

Equality law does not say you have to have a guaranteed interview scheme. If you do not, you must still take account of how reasonable adjustments could enable the person to participate in the recruitment process if you know or could reasonably be expected to know that they are a disabled person.

## Interviews, meetings and tests

An interview, meeting or test can help you work out if someone is the best person for the job. But it will be harder to work this out if you do not assess everyone in a way that helps you:

- find out if they have the skills, qualities and experience to make them the best person for the job, and
- assess each applicant in the same way.

Equality law does not say that you have to meet someone or interview them before offering them a job.

If you decide to interview job applicants, whether that is face to face or over the phone, or to give them a test, then you must not unlawfully discriminate against a job applicant in the way you carry out the meeting, interview or test.

Use the information earlier in this guide to make sure you know what equality law says you must do as an employer.

Examples of what to avoid include:

- Asking questions which make assumptions about people based on their protected characteristics.

For example:

An employer asks a woman if she is going to need time off for family responsibilities, when they do not ask a man.

- Harassing an applicant.

For example:

An employer makes a series of unpleasant 'jokes' about an applicant's race, which create an offensive atmosphere for them.

## **Recruiting disabled people**

If an applicant is a disabled person and has said that they need adjustments for the interview, meeting or test, and those adjustments are **reasonable adjustments**, then you must make them.

For example:

An applicant for a job with an employer has a hearing impairment which means that they use a textphone. The employer has asked applicants to take part in a telephone interview. The applicant tells the employer in advance that they will be using a textphone and the **UK Text Relay Service**, and the employer interviews them in this way. The employer has made a reasonable adjustment.

You only need to make adjustments if you know, or could reasonably be expected to know, that a disabled person is or may be applying for the job. Once you know that or should have known it, you must take steps to find out whether the job applicant needs any adjustments and what those adjustments are. This means you will need to make sure that all of the interview arrangements allow the person to attend and participate effectively, provided these are reasonable adjustments.

For example:

An applicant with a hearing impairment informs the employer that they use a combination of hearing aids and lip reading but will need to be able to see the interviewer's face clearly. The interviewer makes sure that their face is well lit, that they face the applicant when speaking, that they speak clearly and are prepared to repeat questions if the applicant does not understand them. These are likely to be reasonable adjustments for the employer to have to make.

If you have not asked whether an applicant needs an adjustment or if an applicant has not told you in advance, you must still make any adjustment that the applicant needs when they arrive. This is provided you know they are disabled and need an adjustment and that it is reasonable for you to make the adjustment. However, what is reasonable for you to do

if you were not warned in advance, despite having asked the applicant, may be different from what would have been reasonable with more notice.

For example:

An applicant did not tell an employer they need level access because of a mobility impairment. When they arrive, there are steps to the interview room and no lift. The employer is unable to move rooms at short notice but asks them to attend another day when a room with level access will be available. This is likely to be a reasonable adjustment.

You must not change the decision to interview an applicant because when they arrive you discover they are a disabled person. Nor should you change the way you interview them, for example, by cutting the interview short or not testing them in the same way as other applicants (unless the change to the interview is a reasonable adjustment).

You can read more about making reasonable adjustments to remove barriers for disabled people in Chapter 3.

## ***Being flexible about dates and times***

You may need to be flexible or to make changes to the dates or times of interviews to avoid unlawful discrimination, particularly indirect discrimination if you cannot **objectively justify** what you are doing, or a failure to make reasonable adjustments.

For example:

- An employer only offers applicants for a job one time for interviews. A disabled person with a mobility impairment is told to attend at 9am, even though they have asked for a time which allows them to travel on public transport outside the rush hour and explained why. This is likely to be a failure by the employer to make a reasonable adjustment.
- An employer only offers applicants for a job one time for interview. One applicant is an observant Muslim who cannot attend at midday on Friday. Unfortunately, this is the only time they are offered for their interview. Unless the employer can **objectively justify** the lack of flexibility, this may be indirect discrimination because of religion or belief.

## What mustn't I ask an applicant?

You must not ask questions about someone's protected characteristics unless these are very clearly related to the job (for example, because one of the exceptions applies).

If you decide not to employ someone just because of a protected characteristic, unless it comes within the exceptions, this would be direct discrimination.

- In particular, you must not ask questions about health or disability, including about someone's sickness absence record. There are some very limited exceptions to this which you can read about at pages 12–16. One exception is if the answer to the question would mean you would know if a person can carry out an intrinsic or absolutely fundamental function of the job with reasonable adjustments in place. You have a duty to consider reasonable adjustments if the answer reveals that these are necessary.

Instead, ask questions about whether the applicant has the relevant skills, qualities and experience to do the job, not about their health or about any disability they may have.

### Tip for avoiding discrimination

Don't ask questions which may suggest that you have already decided they are the wrong person for the job because of their protected characteristics. For example, saying 'Don't you think you're a bit young for this job?'

Ask questions which relate to the job.

It is a myth that equality law says you must ask everyone exactly the same questions. There is no reason for you not to ask about things that are different for a particular candidate, or follow up an applicant's answers with questions that relate to what they have just said. However, you should be focusing on the same broad subject areas with each applicant. This is because otherwise you may be applying different standards to different applicants based on their protected characteristics, and this might lead to unlawful discrimination.

## Tests

If you ask applicants to do a test of some sort to help you decide who the best person for the job is, you should not use a test to discriminate unlawfully against an applicant.

For example:

- An employer sets a test for applicants for jobs which tests their ability to use a computer. This is directly related to the job. However, they decide only to put people through the test after they have seen them in interview. The employer decides that people who appear over 40 will not be asked to take the test. This is direct discrimination because of age and will be unlawful unless the employer can **objectively justify** it.
- An employer decides to make applicants for jobs take a test of their written English, even though the job does not require a person to have good written English. This test is harder for some people to pass because of their protected characteristics, for example, some people for whom English is not their first language. An applicant was born outside the UK and is fluent in spoken English but less confident in written English. Unless the employer can **objectively justify** making them take this test (which is unlikely if it does not relate to the job), it may be indirect discrimination because of race; it disadvantages that applicant and other people who share their protected characteristic, in this case, having a different national origin.

If you do set a test and it is only available for applicants to carry out at a set time on a set day, you should avoid religious festivals or holy days or times of religious observance as far as you can. Unless you can **objectively justify** the requirement for all applicants to take the test at that particular time, this may be indirect discrimination because of religion or belief. This is because it has a worse impact on people who are followers of the affected religion or belief than on those who are not, because they may not be able to take the test at all, ruling them out from consideration for the job.

## Recruiting disabled people

When application forms are sent out, or at the shortlisting stage, tell applicants if they will be expected to take a test. Give them an outline of what will be involved and ask whether they require any reasonable adjustments. This is because, if an applicant is a disabled person and is *not* told in advance about a test, this may disadvantage them because it does not give them a chance to ask for reasonable adjustments. Even if the applicant does not tell you they are disabled or ask for any adjustments, if this becomes clear once they arrive for the test, you still need to make any adjustments which are reasonable. Otherwise they may be prevented from being able to compete on the same terms as other applicants.

Applicants should not be disadvantaged because of their disability by the content and timing of a test.

For example:

An employer allows an applicant extra time for a written test because they have severe dyslexia. They also provide them with a computer, having checked with them what adjustments they need and accepted that they are reasonable adjustments.

However, you do not have to adapt a test to the point where it no longer tests whether someone would be able to do the job or not (taking into account any reasonable adjustments that would enable the disabled person to do the job).

You can read more about making reasonable adjustments to remove barriers for disabled people in Chapter 3.

### ***Social gatherings as part of the assessment***

If the interview process or assessment includes a social gathering where only alcohol is available, this may disadvantage someone whose religion forbids association with alcohol, for example, members of some Christian denominations and Muslims or people who for a reason related to their disability cannot drink alcohol.

If you are providing food, the same is true of applicants with specific dietary needs based on religion or belief or disability.

Ask in advance and make sure that soft drinks or an alternative meal can be provided. If you do not do this, it puts these applicants at a disadvantage – because they cannot join in the same way as other applicants and this may lead to them being regarded as unfriendly or not willing to mix – which may be indirect discrimination because of religion or belief or disability unless you can **objectively justify** it.

## Equality good practice: what you can do if you want to do more than equality law requires

- The interview or meeting is probably the first time you have seen the applicant or heard them over the phone. Be careful not to make instant, personal and sometimes unfair judgements about someone's suitability because of a **protected characteristic**. Focus on finding out if they have the skills, qualities and experience needed to do the job.
- Don't ask questions either directly or indirectly related to applicants' protected characteristics. This is because this information is highly unlikely to be relevant to whether someone has the skills to do the job or not and may suggest to an applicant that you intend to discriminate, putting you at risk of a tribunal claim.
- Have more than one person to do the interviewing, as this can help avoid unintentional bias against people with particular protected characteristics.
- Whether or not it is not necessary to avoid unlawful discrimination, be flexible over the date and time of the interview or test and give adequate notice; this will help applicants who may have particular family responsibilities or requirements of religious observance. It will also be helpful to some disabled candidates who may need reasonable adjustments in relation to the timing of the interview or test.
- Keep a record of the interview, and keep the notes for 12 months. If an applicant wants to complain, they are entitled to see the notes. This could be important evidence to show that you have not discriminated.
- Ask similar job-related questions of all the applicants, although this does not stop you asking an applicant about a particular aspect of their past experience or about a gap in their work record.
- If you set a test, make sure that the test relates to the requirements of the job. Tests should test an applicant's ability to do the job or to be trained for it, taking into account any **reasonable adjustments** which would enable a disabled person to do the job. If you test anything else, then there is a risk that you will be basing your decision on information which unnecessarily disadvantages people with particular protected characteristics.



## Your questions answered

**Q. What happens if a job applicant mentions something that relates to a protected characteristic, for example, asking about flexibility or telling me how they would do the job if they have a disability and need reasonable adjustments?**

A. Job applicants may feel that they should explain how they can do the job flexibly or with reasonable adjustments. Provided you have asked the right question – in other words, one that is designed to test their ability to do what the job requires, not one that might make the applicant think you will discriminate against them – it does not matter if their answer gives you information you did not ask for. You should, however, be careful not to use the information to rule them out of consideration, but instead consider them objectively against all the other candidates to decide if they are the best person for the job. If they ask you a question, then you can, of course, answer it.

## Recruiting women who are pregnant or on maternity leave

You must not refuse to employ a woman because she is pregnant, on maternity leave or because she has (or has had) an illness related to her pregnancy.

Equality law does not say that a woman applying for a job with you has to tell you that she is pregnant. This is because you must not base your decision about whether or not to employ her on whether she is pregnant but on whether she has the skills to do the job. If a woman does not tell you that she is pregnant and you give her the job, you must not dismiss her when she tells you about her pregnancy.

For example:

A woman applies for a job as a training instructor. On the basis of her application form and her interview, the employer decides she is the best person for the job and offers the job to her. She has just discovered she is pregnant and tells the employer this when she accepts the job offer. If the employer changes their mind and withdraws the job offer, this would be direct discrimination because of pregnancy and cannot be justified.

You can find more help with this situation in the Equality and Human Rights Commission's *New and expectant parents toolkit*.

Nor should you ask a woman whether she intends to have children, whatever her age or marital status or even if you think she might be pregnant. This is not something that you should take into account in deciding whether a person has the skills needed for a particular job.

If you ask these questions, the woman you are asking may think the only reason you want to know is so that you can discriminate against her. If you do not offer her the job after asking these questions, you put yourself at risk of a claim for sex discrimination.

## Equality good practice: using positive action to recruit a wider range of people

- What is 'positive action'?
- Do I have to take positive action?
- When can I use positive action?
- Explaining why you are using positive action
- Treating disabled people better than non-disabled people
- The sort of positive action steps you can take during recruitment
- Tie-break situations
- More about when you are allowed to use positive action and what you have to do to show it is needed
  - What you have to show to be able to use positive action
  - The sort of evidence you can use
  - What 'disadvantage' means
  - What 'different needs' means
  - What 'disproportionately low' means
  - Exceptions where a particular protected characteristic can be looked at during recruitment but which are not the same as positive action.

## *What is 'positive action'?*

'Positive action' means the steps that you can take as an employer to encourage people from groups with different needs or with a past track record of disadvantage or low participation to apply for jobs.

In recruitment, equality law allows positive action before or at the application stage. At this stage, the steps could include encouraging particular groups to apply, or helping people with particular protected characteristics to perform to the best of their ability (for example, by giving them training or support not available to other applicants).

An example of when an employer might decide to take positive action is if they find that the make up of their workforce is different to the make up of the local population, so they decide to encourage people who share particular under-represented protected characteristics to apply for vacancies.

This is not the same as '**positive discrimination**' or '**affirmative action**' which equality law does not allow.

## *Do I have to take positive action?*

Taking positive action is voluntary. You do not have to take positive action. However:

- Meeting the different needs of your workforce can help make your staff more productive.
- Recruiting from a wider range of people, in terms of their protected characteristics, can help your organisation to understand its customers, clients or service users better.
- If you are a **public authority**, positive action may help you meet the **public sector equality duty**.

## *When can I use positive action?*

Equality law says that you have to go through a number of tests to show that positive action is needed.

The tests say that the steps you are allowed to take as part of positive action must:

- be related to the level of disadvantage that exists
- not be simply for the purposes of favouring one group of people over another where there is no disadvantage or under-representation in the workforce.

For example:

An education employer could not use positive action to attract women applicants for an entry level primary teaching post where women already made up 70 per cent of the teaching workforce. Since the steps would not be being taken to overcome a disadvantage or under-representation this would be unlawful direct discrimination.

However, the employer could use positive action to recruit more men as they are under-represented in this workplace.

You must not have a blanket policy or practice of automatically treating people who share a protected characteristic better than those who do not have it. You must still appoint the best person for the job, even if the best person does not have the particular protected characteristic you are targeting.

For example:

A local fire service identifies from its monitoring data that women are under-represented as firefighters. The service makes clear in its next recruitment exercise that applications from women are welcome and holds an open day for potential women applicants at which they can meet women firefighters. However, the fire service must not guarantee that all women will get through the initial stages of the application process, regardless of their suitability.

## ***Explaining why you are using positive action***

Positive action may make people who do not have the particular protected characteristic feel they have not been given the same chance to apply for a job. It is a good idea for you to explain why you have decided to use positive action. This involves showing specific disadvantage or under-representation and that you are not doing more than is needed and proportionate to tackle those problems.

## ***Treating disabled people better than non-disabled people***

As well as these exceptions, equality law allows you to treat a disabled person better – or **more favourably** – than a non-disabled person. This recognises that disabled people generally face a lot of barriers to participating in work and other activities. You can choose to treat a disabled job applicant more favourably even if they are not at a disadvantage due to their disability in the particular situation.

For example:

An employer has a policy of shortlisting and interviewing all disabled applicants who meet the minimum requirements for their jobs. The law would allow this. It would not be unlawful discrimination against a non-disabled applicant who also meets the minimum requirements but is not shortlisted.

## ***The sort of positive action steps you can take during recruitment***

Examples of what you might do (depending on the protected characteristic you are targeting), which would count as positive action, include:

- Encouraging applications from under-represented groups, such as through targeted advertising.

For example:

A nursery with an all-female staff includes a statement in its job adverts to say 'We welcome applications from men as they are currently under-represented in our workforce'. However, if a man applies for a job who is less well-qualified than a woman who applies (in terms of meeting the requirements of the person specification), the nursery must appoint the better qualified woman.

- Offering pre-application training to particular groups where this meets a need. For example, updating people's skills ahead of the recruitment process.
- Offering work shadowing opportunities to people from a particular group to encourage individuals from this group to apply for the job, because they know what's involved.
- Holding open days or 'taster days' which are held exclusively for the targeted group.
- Offering bursaries to obtain qualifications in a profession such as journalism.
- Making it clear that childcare facilities or vouchers are available.

Remember you will need to consider if such measures are needed and are proportionate. You should regularly review what you are doing to make sure positive action is still appropriate.

## ***Tie-break situations***

The other positive action step you can take is to decide to appoint an applicant from a group sharing a protected characteristic if you reasonably believe this group to be

disadvantaged or under-represented in the workforce or if their participation in an activity is disproportionately low. You should be able to show there is some information or evidence to support your belief, but it does not need to be sophisticated data or research. You could just review the profile of your own workforce or the sector as a whole. National labour force surveys may be a useful resource.

You can only use these 'tie-break' provisions when faced with a choice between two candidates who are as qualified as each other. It is also possible, though it would be unusual, that a tie-break situation could arise where more than two candidates were equally qualified for the post.

Although it is most likely that you would use the tie-break provisions at the end of the recruitment process, you can also treat an applicant more favourably at any earlier stage of the process. But remember you can only use these provisions if it is a proportionate way of enabling or encouraging people from the disadvantaged or under-represented group to overcome or minimise the disadvantage of that group.

For example:

A housing advice service has no Muslim employees, even though it is located in an area where there is a high Muslim population. When a vacancy arises, there are two candidates of equal merit. One candidate is Muslim and the other is not. The advice service could choose to offer the job to the Muslim candidate under the positive action provisions, so that the non-Muslim candidate could not claim religious discrimination.

The phrase 'as qualified as' is not defined by the law, but you should give it a broad meaning. You should do a full and objective assessment of each applicant's suitability, skills, qualifications (professional and academic), competence and professional performance, matched against a set of objective criteria for the job.

You must not have a general policy of treating people with the relevant protected characteristic more favourably in connection with recruitment.

## ***More about when you are allowed to use positive action and what you have to do to show it is needed***

What you have to show to be able to use positive action

You can use positive action where you reasonably think (in other words, on the basis of some evidence) that:

- people who share a protected characteristic suffer a *disadvantage* connected to that characteristic
- people who share a protected characteristic have *needs that are different* from the needs of people who do not share it, or
- participation in an activity by people who share a protected characteristic is *disproportionately low*.

Sometimes the reasons for taking action will overlap. For example, people sharing a protected characteristic may be at a disadvantage and that disadvantage may also give rise to a different need or may be reflected in their low level of participation in particular activities.

To deal with the three situations, you can take **proportionate** action to:

- enable or encourage people to overcome or minimise disadvantage
- meet different needs, or
- enable or encourage participation.

### **The sort of evidence you can use**

You can only decide to use positive action if you reasonably think that a group of people who share a particular protected characteristic is under-represented or disadvantaged or has different needs.

You will need to have some evidence to show that your belief is reasonable, but it does not need to be sophisticated statistical data or research. For example, you could look at the profile of your workforce and compare it to several comparable employers in your area or sector.

### Tip for finding out about your workforce

It won't always be obvious that people in a workforce have a particular characteristic, so the best way for you to gather evidence is through **monitoring**.

Other information can be used as well – it does not have to be information you have gathered for yourself.

For example:

National research shows that disabled people are under-represented in working in the hotel and hospitality industry. A hotel chain decides to tackle this under-representation by holding an open day targeted at disabled people.

You can target more than one group with a particular protected characteristic provided that for each group you have reason to believe there is disadvantage, different need or low participation.

### What 'disadvantage' means

The law does not define 'disadvantage' but it is generally understood to relate to barriers or obstacles which make it difficult for a person to enter into, or make progress in, a trade, sector or workplace.

For example:

A requirement to work full-time may act as a barrier for women to apply for a job because they need flexible working so that they can combine paid work with family responsibilities. An employer therefore adopts flexible working policies for jobs where these have not usually been offered, to encourage more women to apply for such jobs.

### What 'different needs' means

Certain groups with protected characteristics may have needs which differ from those persons who do not have the protected characteristic. A need is something required because it is essential or important, rather than merely desirable to those with a particular characteristic. A need does not have to be unique to those with that particular characteristic, but it must be something that the employer reasonably believes relates to the characteristic.



For example:

An employer is conscious that women are under-represented in a particular job which requires a knowledge of the latest IT packages. They work with the local Jobcentre to offer IT refresher courses to women, especially those who have taken time out of the workforce for family responsibilities. These women are then in a better position to apply for the vacancies.

## What 'disproportionately low' means

Low participation may or may not be disproportionate. For you to use positive action to overcome it, participation must be low compared with the level of participation that could reasonably be expected. This might be evidenced by means of statistics, or, where these are not available, by qualitative evidence based on monitoring or consultation.

For example:

An employer with a factory in a major city that has an ethnically varied population employs 150 people but only one Asian worker. They will be able to show low participation of Asian workers by looking at their workforce profile in comparison to the size of the Asian population in the city. But if the factory were located in an area which did not have an ethnically diverse population, where the Asian population is significantly smaller, the participation of Asian workers in the factory may not be low when compared to the Asian population of that area.

## Exceptions where a particular protected characteristic can be looked at during recruitment but which are not the same as positive action

There are a few **exceptions** where employers can target applicants with a particular protected characteristic without this being unlawful discrimination. These are not the same as positive action.

For example:

- In some situations, it may be possible to specify that someone must be over or under a certain age, if this can be **objectively justified**.
- If an '**occupational requirement**' exists for the job, for example, when a personal assistant is being recruited to support a disabled person in bathing, toileting and dressing, it is possible to recruit someone of the same sex as the

person being supported, and the applicant's sex would be an occupational requirement.

The difference between an occupational requirement and positive action is that:

- An employer using an occupational requirement says that only people with a particular protected characteristic can do the job.
- An employer who wants to use positive action says that anyone who has the right skills, knowledge and experience is able to do the job, but they want to look especially hard for someone with a particular protected characteristic.

You can read more about exceptions at pages 12–16.

## Equality good practice: using monitoring forms

Giving job applicants a monitoring form will help you to see who has applied for the job and who has been selected, in terms of their protected characteristics. You could then compare who has applied for jobs against the profile of jobseekers in the local community, nationally, in your sector and the profile of employees already in the organisation. This highlights any groups who are not applying or not getting further on in the recruitment. If this is happening, then look again at your assessment processes: are you excluding good applicants unnecessarily?

Equality law does not say that you have to use a monitoring form to find out individual personal information about your job applicants and their protected characteristics as part of the recruitment process.

But if you do use a monitoring form and this tells you about a person's protected characteristics, then you must not use this information to discriminate against them. You must not base decisions about who to take further into the application process on the information people give on the monitoring form.

### ***Can I ask about health or disability on the monitoring form?***

In general, you must not ask a job applicant questions relating to health or disability. One of the exceptions to this rule applies to monitoring. You are allowed to ask questions about health or disability if the point of this is to find out how many job applicants are disabled people and whether they are shortlisted or appointed.

Answers to monitoring questions about health or disability should be dealt with in the same way as the answers to other monitoring questions, in other words, they should be kept

separately from the main application form. The person or people shortlisting and appointing should not see the information before deciding who to interview or appoint.

## ***What happens if someone's protected characteristics are relevant to the recruitment?***

If, exceptionally, someone's protected characteristics are playing a part in the decision-making, for example:

- if you are signed up to the **guaranteed interview scheme**, or
- if **positive action** is being used in recruitment for a particular job, or
- if you have applied an **occupational requirement**, or
- if it is either a legal requirement or otherwise **objectively justifiable** that someone has to be a particular age to do a job, or
- if you are a **religion or belief organisation** and the job is one where someone has to be of a particular religion or belief or you are an **organised religion**, or the job is for the purposes of an organised religion, and the job is one where it is necessary to have or not have a particular characteristic or behave in a particular way

then you should make this clear when you ask people to apply for the job and ask them separately from the monitoring form if they have the relevant protected characteristic. This makes sure that the person or people making the decision about who to interview or employ only see the information about protected characteristics that is relevant and do not need to see the monitoring form itself.

If you do use a monitoring form, then the information that is on it is likely to be personal and you should make sure that it is kept safely so that people's confidentiality or **data protection** rights are not broken. This may be particularly important for some protected characteristics, such as gender reassignment, and some disabilities, such as HIV status and mental health conditions.

## Equality good practice: what you can do if you want to do more than equality law requires

- Giving every applicant for a job with you a monitoring form will help you to see who has applied for the job and who has been selected, in terms of their protected characteristics. You could then compare who has applied for jobs against the profile of jobseekers in the local community, in your sector and nationally and the profile of employees already in the organisation. This highlights any groups who are not applying or not getting further on in the recruitment. If this is happening, then look again at your assessment processes: are you excluding good applicants unnecessarily?
- A job applicant does not have to fill out a monitoring form if they don't want to. However, you can say to them that this information can be very helpful in making sure you have a diverse workforce, and this is why you are asking for it.
- There is no point in collecting information unless you intend to use what people tell you to:
  - check who is applying for jobs
  - see if people with protected characteristics are under-represented, for example, compared with your local area and sector, and
  - think about what you could do to address this.
- You should tell people why you are collecting this information and what you will do with it. You should also reassure them that the data will be treated confidentially and not be used for shortlisting. You should give applicants the choice to opt out of the process by including the option to tick 'prefer not to say' within each category. If someone refuses to give you the information you ask for, do not hold this against them.
- If your organisation is very small and you do not have a Human Resources department, for example, who can make sure the monitoring forms are kept separate, then consider asking each applicant to put their monitoring form in a separate envelope or attach it in a document to a separate email and only look at it after you have decided who to recruit.

You can read more about monitoring in the Equality and Human Rights Commission guide: *Good equality practice for employers: equality policies, equality training and monitoring*.

## 2. When you are responsible for what other people do

As an **employer** or in another work situation, it is not just how you personally behave that matters.

If another person who is:

- employed by you, or
- carrying out your instructions to do something (who the law calls your agent)

does something that is unlawful discrimination, **harassment** or **victimisation**, you can be held legally responsible for what they have done.

This part of the guide explains:

- When you can be held legally responsible for someone else's unlawful discrimination, harassment or victimisation
- How you can reduce the risk that you will be held legally responsible
- How you can make sure your employees and agents know how equality law applies to what they are doing
- When workers employed by you or your agents may be personally liable
- What happens if a person instructs someone else to do something that is against equality law
- What happens if a person helps someone else to do something that is against equality law
- What happens if you try to stop equality law applying to a situation.

# When you can be held legally responsible for someone else's unlawful discrimination, harassment or victimisation

As an employer, you are legally responsible for acts of discrimination, harassment and victimisation carried out by workers who are employed by you in the course of their employment.

You are also legally responsible as the 'principal' for the acts of your **agents** done with your authority. Your agent is someone you have instructed to do something on your behalf, but who is not employed by you. It does not matter whether you have a formal contract with them.

As long as:

- the worker was acting in the course of their employment – in other words, while they were doing their job, or
- your agent was acting within the general scope of your authority – in other words, while they were carrying out your instructions

it does not matter whether or not you:

- knew about or
- approved of

what the worker or agent did.

For example:

- .An employer tells their receptionist to send out application forms to anyone telephoning in to ask about a recently advertised job. The receptionist hears that a caller has a strong African accent and, instead of sending out a form, tells them the job has gone. The employer will be responsible for the receptionist's actions.
- An employer engages a head-hunter to work in-house to recruit a team of senior management. The head-hunter weeds out applications from women of child bearing age. This is almost certainly unlawful sex discrimination. Both the employer and the head-hunter (who is the employer's agent) would be legally responsible for the discrimination, except that the employer can show that they told the head-hunter to comply with equality law. This means that the authority given to the head-hunter as agent did not extend to acting in a discriminatory way, the agent acted outside the scope of the employer's authority and only the agent is liable for the discrimination.

However, you will not be held legally responsible if you can show that:

- you took all reasonable steps to prevent a worker employed by you acting unlawfully.
- an agent acted outside the scope of your authority (in other words, that they did something so different from what you asked them to do that they could no longer be thought of as acting on your behalf).

## ***How you can reduce the risk that you will be held legally responsible***

You can reduce the risk that you will be held legally responsible for the behaviour of the people who work for you if you tell them how to behave so that they avoid unlawful discrimination, harassment or victimisation.

This does not just apply to situations where you and your staff are dealing face-to-face with other people in a work situation, but also to how you plan what happens.

When you or your workers or agents are planning what happens to job applicants, you need to make sure that your decisions, rules or ways of doing things are not:

- **Direct discrimination**, or
- **Indirect discrimination** that you cannot **objectively justify**, or
- **Discrimination arising from disability** that you cannot **objectively justify**, or
- **Harassment**

and that you have made **reasonable adjustments** for any disabled people who are applying for a job with you.

So it is important to make sure that your workers and agents know how equality law applies to what they are doing.

## How you can make sure your workers and agents know how equality law applies to what they are doing

Tell your workers and agents what equality law says about how they must and must not behave while they are working for you.

Below are some examples of reasonable steps you can take to prevent unlawful discrimination or harassment happening in your workplace:

- telling your workers and agents when they start working for you – and checking from time to time that they remember what you told them, for example, by seeing if/how it has made a difference to how they behave. This could be a very simple checklist you talk them through, or you could give them this guide, or you could arrange for them to have **equality training**
- writing down the standards of behaviour you expect in an **equality policy**
- including a requirement about behaving in line with equality law in every worker's **terms of employment** or other contract, and making it clear that breaches of equality law will be treated as disciplinary matters or breaches of contract.

You can read more about equality training and equality policies in the Equality and Human Rights Commission guide: *Good equality practice for employers: equality policies, equality training and monitoring*.



## *Using written terms of employment for employees*

Employment law says you must, as an employer, give every **employee** a written statement of the main terms of their employment. So you could include a sentence in these written terms that tells the person working for you they must meet the requirements of equality law, making it clear that a failure to do so will be a disciplinary offence.

Obviously, if you do this, it is important that you also tell the employee what it means. You could use an equality policy to do this, or you could just discuss it with them, or you could give them this guide to read. But it is important that they are clear on what equality law says they must and must not do, or you may be held legally responsible for what they do.

Remember, if the employee is a disabled person, it may be a reasonable adjustment to give them the information in a way that they can understand.

If you receive a complaint claiming unlawful discrimination by one of your employees or someone else in a work situation you are in charge of, you can use the written terms to show that you have taken a reasonable step to prevent unlawful discrimination and harassment occurring. However, you will have to do more than this to actively prevent discrimination.

If someone does complain, you should investigate what has taken place and, if appropriate, you may need to discipline the person who has unlawfully discriminated against or harassed someone else, give them an informal or formal warning, provide training or even dismiss them; the action you take will obviously vary according to the nature of the breach and how serious it was.

If you do find that a worker employed by you has unlawfully discriminated against someone else in a work situation, then look again at what you are telling your staff to make sure they know what equality law means for how they behave towards the people they are working with.

You can read more about what to do if someone says they've been discriminated against in Chapter 4.

### Good practice tip for how you and your staff should behave

Ideally, you want anyone who works for you to treat everyone they come across with dignity and respect. This will help you provide a good working environment (not just without discriminating but more generally) and can make your workers more productive.

If your staff do unlawfully discriminate against their fellow workers or others in a work situation, your reputation may suffer even if the person on the receiving end does not bring a legal case against you.

## When your workers or agents may be personally liable

A worker employed by you or your agent may be personally responsible for their own acts of discrimination, harassment or victimisation carried out during their employment or while acting with your authority. This applies where either:

- you are also liable as their employer or principal, or
- you would be responsible but you show that:
  - you took all reasonable steps to prevent your worker discriminating against, harassing or victimising someone, or
  - that your agent acted outside the scope of your authority.

For example:

A security guard employed by a bank makes offensive remarks to a Muslim job applicant when he arrives for a job interview with the bank. The employer would be liable for the security guard's actions, but is able to show that they took all reasonable steps to prevent any harassment of this kind. They had given extensive training to all their security guards about avoiding harassment and had warned them of disciplinary consequences if they did so. Even if the employer is able to avoid legal responsibility for the harassment because they took all reasonable preventative steps, the job applicant can still claim compensation against the security guard in an Employment Tribunal.

But there is an exception to this. An worker or agent will *not* be responsible if their employer or principal has told them that there is nothing wrong with what they are doing and the employee or agent **reasonably** believes this to be true.

It is a criminal offence, punishable by a fine, for an employer or principal to make a false statement which a worker employed by them or their agent relies upon to carry out an unlawful act.

## What happens if a person instructs someone else to do something that is against equality law

An employer or principal must not instruct, cause or induce a worker employed by them or their agent to discriminate against, harass or victimise a job applicant, or to attempt to do so.

'Causing' or 'inducing' someone to do something can include situations where someone is made to do something or persuaded to do it, even if they were not directly instructed to do it.

Both:

- the person who receives the instruction or is caused or induced to discriminate against, harass or victimise, and
- the person who is on the receiving end of the discrimination, harassment or victimisation

have a claim against the person giving the instructions if they suffer loss or harm as a result of the instructing or causing or inducing of the discrimination, harassment or victimisation.

This applies whether or not the instruction is actually carried out.

## What happens if a person helps someone else to do something that is against equality law

A person must not help someone else carry out an act which the person helping knows is unlawful under equality law.

However, if the person helping has been told by the person they help that the act is lawful and they **reasonably** believe this to be true, they will not be legally responsible.

It is a criminal offence, punishable by a fine, to make a false statement which another person relies on to help to carry out an unlawful act.

# What happens if you try to stop equality law applying to a situation

You cannot stop equality law applying to a situation if it does in fact apply. For example, there is no point in making a statement in a contract of employment that equality law does not apply. The statement will not have any legal effect. That is, it will not be possible to enforce or rely on a term in a contract that tries to do this. This is the case even if the other person has stated they have understood the term and/or they have agreed to it.

For example:

- A worker's contract includes a term saying that they cannot bring a claim in an Employment Tribunal. Their employer sexually harasses them. The term in their contract does not stop them bringing a claim for sexual harassment in the Employment Tribunal.
- A business partner's partnership agreement contains a term that says 'equality law does not apply to this agreement'. The partner develops a visual impairment and needs reasonable adjustments to remove barriers to their continuing to do their job. The other partners instead ask them to resign from the partnership. The partner can still bring a claim in the Employment Tribunal for a failure to make reasonable adjustments and unlawful disability discrimination.
- An applicant for a job is told 'equality law does not apply to this business, it is too small'. She still agrees to go to work there. When she becomes pregnant, she is dismissed. She can still bring a claim in the Employment Tribunal for pregnancy discrimination.

# 3. The duty to make reasonable adjustments for disabled people

Equality law recognises that bringing about equality for disabled people may mean changing the way in which employment is structured, the removal of physical barriers and/or providing extra support for a disabled worker.

This is the **duty to make reasonable adjustments**.

The duty to make reasonable adjustments aims to make sure that, as far as is reasonable, a disabled person has the same access to everything that is involved in getting and doing a job as a non-disabled person.

When the duty arises, you are under a positive and proactive duty to take steps to remove or reduce or prevent the obstacles a disabled job applicant faces. It is not only a matter of making adjustments to the recruitment process, but of bearing in mind that adjustments may be necessary for the job itself.

Many of the adjustments you can make will not be particularly expensive, and you are not required to do more than what is reasonable for you to do. What is reasonable for you to do depends, among other factors, on the size and nature of your organisation.

You only have to make adjustments where you are aware – or should reasonably be aware – that a job applicant has a disability.

If, however, you do nothing, and a disabled job applicant can show that there were barriers you should have identified and reasonable adjustments you could have made, they can bring a claim against you in the Employment Tribunal, and you may be ordered to pay them compensation as well as make the reasonable adjustments.

In particular, the need to make adjustments for an individual job applicant:

- must not be a reason not to appoint someone to a job or promote them if they are the best person for the job with the adjustments in place
- must be considered in relation to every aspect of a person's job

provided the adjustments are reasonable for you to make.

Many factors will be involved in deciding what adjustments to make and they will depend on individual circumstances. Different people will need different changes, even if they appear to have similar impairments.

It is advisable for you to discuss the adjustments with the disabled person, otherwise the adjustments may not be effective. However, except in specific circumstances, you cannot have this discussion before you have made a disabled job applicant a job offer, conditional if necessary. The rules on pre-employment health or disability enquiries are set out in more detail earlier at page 9.

The rest of this section looks at the detail of the duty and gives examples of the sorts of adjustments you could make. It looks at:

- Which disabled people does the duty apply to?
- Finding out if someone is a disabled person
- The three requirements of the duty
- Are disabled people at a substantial disadvantage?
- Changes to policies and the way your organisation usually does things
- Dealing with physical barriers
- Providing extra equipment or aids
- Making sure an adjustment is effective
- Who pays for reasonable adjustments?
- What is meant by 'reasonable'
- Reasonable adjustments in practice
- Specific situations
  - Employment services
  - Occupational pensions
- Questions about health or disability.

## Which disabled people does the duty apply to?

The duty applies to any disabled person who:

- works for you, or
- applies for a job with you, or
- tells you they are thinking of applying for a job with you.

It applies to all stages and aspects of employment. It does not matter if the worker was a disabled person when they began working for you, or if they have become a disabled person while working for you.

The duty may also apply after employment has ended.

The duty also applies in relation to **employment services**, with some differences which are explained later in this chapter.

Reasonable adjustments may also be required in relation to occupational pension schemes. This is explained later in this chapter.

## Finding out if someone is a disabled person

You only have to make these changes where you know or could reasonably be expected to know that a disabled person is or may be a job applicant. This means doing everything you can reasonably be expected to do to find out.

For example:

A job applicant arrives for an interview on a dark wintry day wearing sunglasses. This should suggest to the employer that the applicant may have a disability, eg a visual impairment or form of epilepsy. The employer should ask the applicant whether they need any adjustments to the location or interview arrangements.

This does not, however, mean asking intrusive questions or ones that violate someone's dignity. Think about privacy and confidentiality in what you ask and how you ask.

Be aware that there are restrictions on when you can ask health- or disability-related questions before making a job offer or accepting a job applicant into a pool of applicants to be offered a job when one is available. This is to make sure that job applicants are not discriminated against because of issues related to health or disability. The exceptions to the restriction are set out earlier in this guide at page 10.

You can ask questions to find out if a job applicant needs reasonable adjustments for the recruitment process. But you must use their answers only for working out the adjustments they need and whether these are reasonable.

If you used the fact that the person needed reasonable adjustments as a reason not to take them further into the recruitment process, this would be unlawful discrimination.

If a job applicant does not ask for adjustments in advance but turns out to need them, you must still make them, although what is reasonable in these circumstances may be different from what would be reasonable with more notice. You must not hold the fact that you have to make last minute adjustments against the applicant.

For example:

A job applicant does not tell an employer in advance that they use a wheelchair and the employer does not know about this. On arriving for the interview the applicant discovers that the room is not accessible. Although the employer could not have been expected to make the necessary changes in advance, it would be a reasonable adjustment to hold the interview in an alternative, accessible room if one was available without too much disruption or cost. Alternatively, it might be a reasonable adjustment to reschedule the interview if this was practicable.



## Good practice tip: be prepared for making reasonable adjustments

Equality law says that you must make reasonable adjustments if you know that a worker or job applicant is a disabled person, that they need adjustments and that those adjustments are reasonable.

You don't have to put reasonable adjustments in place just in case a disabled person applies for a job.

But you may want to be prepared:

- Think in advance about what the core tasks of a particular job are and what adjustments might be possible (before starting a recruitment or promotion exercise, for example).
- Ask job applicants if they need reasonable adjustments to take part in the recruitment process. Do bear in mind the restriction on asking health- or disability-related questions and make it clear to applicants that the only reason you are asking is to make sure that you remove any barriers during the recruitment process, so far as is reasonable (or if one of the other exceptions applies).
- Put in place a process for working out reasonable adjustments in the event of a disabled person starting work with the organisation, before being faced with an individual situation.
- Make sure you know in advance what support is available to disabled people from Access to Work.
- If you are making renovations or alterations to your building, thinking about how you can make the new parts of your building more accessible for disabled people will help you if you later employ a disabled person and will allow you to attract more potential employees.

As well as avoiding a possible Employment Tribunal claim, being open to making reasonable adjustments will mean you have a wider choice of workers. A disabled applicant may be the best person for the job.

## The three requirements of the duty

The duty contains three requirements that apply in situations where a disabled person would otherwise be placed at a **substantial disadvantage** compared with people who are not disabled.

- The first requirement involves changing the way things are done (equality law talks about where the disabled job applicant is put at a substantial disadvantage by a **provision, criterion or practice** of their employer).

For example:

An employer has a policy that designated car parking spaces are used only by existing workers and not by visitors. A job applicant who has a mobility impairment and needs to park very close to the interview location, is given a designated car parking space for their interview. This is likely to be a reasonable adjustment to the employer's car parking policy.

- The second requirement involves making changes to overcome barriers created by the **physical features** of your workplace.

For example:

Clear glass doors at the end of a corridor in a particular workplace present a hazard for a visually impaired job applicant or worker. Adding stick-on signs or other indicators to the doors so that they become more visible is likely to be a reasonable adjustment for the employer to make.

- The third requirement involves providing extra equipment (which equality law calls an **auxiliary aid**) or getting someone to do something to assist the disabled person (which equality law calls an **auxiliary service**).

For example:

A blind job applicant attends the workplace for an interview. The employer arranges for a member of staff to meet them and generally accompany them, so they can be shown to the toilets, the cloakroom and the interview room as and when necessary.

Each of these requirements is looked at in more detail later in this part of the guide.

# Are disabled people at a substantial disadvantage?

The question you need to ask yourself is whether:

- the way you do things
- any **physical feature** of your workplace
- the absence of an auxiliary aid or service

puts a disabled worker or job applicant at a **substantial** disadvantage compared with a person who is not disabled.

Anything that is more than minor or trivial is a substantial disadvantage.

If a substantial disadvantage does exist, then you must make reasonable adjustments.

The aim of the adjustments you make is to remove or reduce the substantial disadvantage.

But you only have to make adjustments that are reasonable for you to make. There is more information about how to work out what is reasonable a bit later in this part of the guide.

## *Changes to policies and the way your organisation usually does things*

The first requirement involves changing the way things are done (equality law talks about where the disabled job applicant/worker is put at a substantial disadvantage by a **provision, criterion or practice** of their employer).

This means looking at whether you need to change some written or unwritten policies, and/or some of the ways you usually do things, to remove or reduce barriers that would place a disabled person at a substantial disadvantage, for example, by preventing them from being able to work for you or applying for a job with you or stopping them being fully involved at work.

This includes your processes for deciding who is offered employment, criteria for promotion or training, benefits, working conditions and contractual arrangements.

For example:

- Supervisors in an organisation are usually employed on a full-time basis. The employer agrees to a disabled person whose impairment causes severe fatigue working on a part-time or job share basis. By doing this, the employer is making a reasonable adjustment.
- The design of a particular workplace makes it difficult for a disabled person with a hearing impairment to hear, because the main office is open plan and has hard flooring, so there is a lot of background noise. Their employer agrees that staff meetings should be held in a quieter place that allows that person to fully participate in the meeting. By doing this, the employer is making a reasonable adjustment.

## *Dealing with physical barriers*

The second requirement involves making changes to overcome barriers created by the **physical features** of your workplace.

This means you may need to make some changes to your building or premises for a disabled person who works for you, or applies for a job with you.

Exactly what kind of change you make will depend on the kind of barriers your premises present. You will need to consider the whole of your premises. You may have to make more than one change.

Physical features include: steps, stairways, kerbs, exterior surfaces and paving, parking areas, building entrances and exits (including emergency escape routes), internal and external doors, gates, toilet and washing facilities, public facilities (such as telephones, counters or service desks), lighting and ventilation, lifts and escalators, floor coverings, signs, furniture, and temporary or movable items (such as equipment and display racks). Physical features also include the sheer scale of premises (for example, the size of a building). This is not an exhaustive list.

- A physical feature could be something to do with the structure of the actual building itself like steps, changes of level, emergency exits or narrow doorways.
- Or it could be something about the way the building or premises have been fitted out, things like heavy doors, inaccessible toilets or inappropriate lighting.
- It could even be the way things are arranged inside the premises such as fixtures and fittings like shelf heights in storage areas or fixed seating in canteens.

For example:

An employer has recruited a worker who is a wheelchair user and who would have difficulty negotiating her way around the office. In consultation with the new worker, the employer rearranges the layout of furniture in the office. The employer has made reasonable adjustments.

## ***Providing extra equipment or aids***

The third requirement of the duty involves providing extra equipment – which equality law calls **auxiliary aids** – and **auxiliary services**, where someone else is used to assist the disabled person, such as a reader, a sign language interpreter or a support worker.

An auxiliary aid or service may make it easier for a disabled person to do their job or to participate in an interview or selection process. So you should consider whether it is reasonable to provide this.

The kind of equipment or aid or service will depend very much on the individual disabled person and the job they are or will be doing or what is involved in the recruitment process. The disabled person themselves may have experience of what they need, or you may be able to get expert advice from some of the organisations listed in *Further sources of information and advice*.

## ***Making sure an adjustment is effective***

It may be that several adjustments are required in order to remove or reduce a range of disadvantages and sometimes these will not be obvious to you. So you should work, as much as possible, with the disabled person to identify the kind of disadvantages or problems that they face and also the potential solutions in terms of adjustments.

But even if the disabled person does not know what to suggest, you must still consider what adjustments may be needed.

You may be able to get expert advice from some of the organisations listed in *Further sources of information and advice*.













































































































