

Battens Employment Law Update

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Head of Employment

Government Prohibit Pre-employment Health and Disability Questions

The new Equality Act 2010, which came into force on 1 October means that, save in the case of certain exceptions, employers are not permitted to enquire about the health and disability of the applicant before making an offer of employment.

Employers need to look at this aspect of their recruitment processes to avoid falling foul of the new law and opening themselves up to claims of disability discrimination.

This applies to questions about health, absence and disability in an application form or at interview. In addition, employers can no longer routinely send out pre-employment health questionnaires or refer prospective employees to an occupational health professional for a health assessment prior to being offered a job.

Employers are only permitted to make these enquiries before offering employment where it is necessary for the purpose of:

- establishing whether an individual can take part in any assessment as part of the recruitment process and about reasonable adjustments relating to such an assessment
- establishing whether reasonable adjustments may be needed during the recruitment process generally (such as for interview)
- monitoring diversity in the workplace (in which case those making employment decisions must not see the answers and the information must be used only for the purpose requested)
- establishing whether the prospective employee will be able to carry out a function intrinsic to the work concerned (intrinsic meaning absolutely fundamental)
- carrying out lawful positive action
- establishing whether a person has a disability which is a lawful occupational requirement

Employers have 2 choices if they are to remain within the law and avoid claims for disability discrimination;

- continue to ask such questions prior to making any job offer provided they come under one of these exceptions, or
- make the offer of employment conditional upon satisfactory health checks, as this is still permissible under the new legislation.





Many employers may choose the latter approach as the most straightforward option.

However, guidance on the new legislation indicates that if an offer is to be made conditional upon satisfactory health checks these questions should relate to the particular job function and enable the employer to make reasonable adjustments.

Employers are advised to check their recruitment processes to make sure they are not faced with claims for disability discrimination.

If you would like to speak to someone about an employment matter, please contact Maeve Vickery on 01935 846131 or email m.vickery@battens.co.uk

Our Employment Law Services:

- Day to day HR support
- Drafting of contracts and Compromise Agreements
- Providing policy documentation and advice
- Litigation and advocacy in the Employment Tribunal
- Business re-organisations – TUPE and redundancy
- Changes to terms and conditions



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