



# Equality Act 2010

## 2010 CHAPTER 15

### PART 5

#### WORK

### CHAPTER 1

#### EMPLOYMENT, ETC.

#### *Recruitment*

#### **60 Enquiries about disability and health**

- (1) A person (A) to whom an application for work is made must not ask about the health of the applicant (B)—
  - (a) before offering work to B, or
  - (b) where A is not in a position to offer work to B, before including B in a pool of applicants from whom A intends (when in a position to do so) to select a person to whom to offer work.
- (2) A contravention of subsection (1) (or a contravention of section 111 or 112 that relates to a contravention of subsection (1)) is enforceable as an unlawful act under Part 1 of the Equality Act 2006 (and, by virtue of section 120(8), is enforceable only by the Commission under that Part).
- (3) A does not contravene a relevant disability provision merely by asking about B's health; but A's conduct in reliance on information given in response may be a contravention of a relevant disability provision.
- (4) Subsection (5) applies if B brings proceedings before an employment tribunal on a complaint that A's conduct in reliance on information given in response to a question about B's health is a contravention of a relevant disability provision.

*Status: Point in time view as at 28/03/2016.*

*Changes to legislation: Equality Act 2010, Cross Heading: Recruitment is up to date with all changes known to be in force on or before 22 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (5) In the application of section 136 to the proceedings, the particulars of the complaint are to be treated for the purposes of subsection (2) of that section as facts from which the tribunal could decide that A contravened the provision.
- (6) This section does not apply to a question that A asks in so far as asking the question is necessary for the purpose of—
- (a) establishing whether B will be able to comply with a requirement to undergo an assessment or establishing whether a duty to make reasonable adjustments is or will be imposed on A in relation to B in connection with a requirement to undergo an assessment,
  - (b) establishing whether B will be able to carry out a function that is intrinsic to the work concerned,
  - (c) monitoring diversity in the range of persons applying to A for work,
  - (d) taking action to which section 158 would apply if references in that section to persons who share (or do not share) a protected characteristic were references to disabled persons (or persons who are not disabled) and the reference to the characteristic were a reference to disability, or
  - (e) if A applies in relation to the work a requirement to have a particular disability, establishing whether B has that disability.
- (7) In subsection (6)(b), where A reasonably believes that a duty to make reasonable adjustments would be imposed on A in relation to B in connection with the work, the reference to a function that is intrinsic to the work is to be read as a reference to a function that would be intrinsic to the work once A complied with the duty.
- (8) Subsection (6)(e) applies only if A shows that, having regard to the nature or context of the work—
- (a) the requirement is an occupational requirement, and
  - (b) the application of the requirement is a proportionate means of achieving a legitimate aim.
- (9) “Work” means employment, contract work, a position as a partner, a position as a member of an LLP, a pupillage or tenancy, being taken as a devil, membership of a stable, an appointment to a personal or public office, or the provision of an employment service; and the references in subsection (1) to offering a person work are, in relation to contract work, to be read as references to allowing a person to do the work.
- (10) A reference to offering work is a reference to making a conditional or unconditional offer of work (and, in relation to contract work, is a reference to allowing a person to do the work subject to fulfilment of one or more conditions).
- (11) The following, so far as relating to discrimination within section 13 because of disability, are relevant disability provisions—
- (a) section 39(1)(a) or (c);
  - (b) section 41(1)(b);
  - (c) section 44(1)(a) or (c);
  - (d) section 45(1)(a) or (c);
  - (e) section 47(1)(a) or (c);
  - (f) section 48(1)(a) or (c);
  - (g) section 49(3)(a) or (c);
  - (h) section 50(3)(a) or (c);

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- (i) section 51(1);
  - (j) section 55(1)(a) or (c).
- (12) An assessment is an interview or other process designed to give an indication of a person's suitability for the work concerned.
- (13) For the purposes of this section, whether or not a person has a disability is to be regarded as an aspect of that person's health.
- (14) This section does not apply to anything done for the purpose of vetting applicants for work for reasons of national security.

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