

Discrimination at interview stage

How employers can fall foul of the legislation

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Many interviewers are simply not aware what questions they can and cannot ask you at the interview stage. This is especially true of the smaller companies which may have less formal training of their staff. So what do employers need to be wary of?

Interviewers should avoid asking questions about your marital status, whether or not you have children or are planning a family soon. It is acceptable, however, to be asked whether there are any responsibilities which could interfere with your attendance at work. Furthermore, you should not be questioned about your sexual preferences as this could fall foul of sexual orientation regulations and therefore also be discriminatory.

If, on the basis of your name or appearance, an interviewer was to ask about your place of birth, ethnic group, race, native language or religious views or affiliations, this could also be seen as potential discrimination. You should be interviewed on the merits of your expertise for the job, and where you come from and what religion you are should therefore be irrelevant. There may be certain exceptions to this, such as where expertise in a certain culture or language is necessary for the proper fulfilling of a role, but this is a fine line to tread by interviewers.

Further to recently introduced age discrimination laws, employers should also be careful not to ask a candidate about their age or date of birth. Leading related questions would also be out of order, for example, asking an older applicant how long he or she saw herself working until retirement. If it was necessary to ascertain whether a potential employee met the minimum age required for the position, the question could be phrased as 'are you over 21 years'?

There are further hurdles for employers when questioning potential employees about any disabilities or illnesses. For example, asking whether a person has a disability or whether the disability would affect their ability to do a job would be discriminatory. The question may be disguised in another way, such as 'When did you last visit your doctor and what was the reason?' It should be noted that if you withhold information that can have a direct bearing on your ability to perform a job, this is legitimate grounds for an employer to later dismiss you.

The ambit of UK discrimination legislation is wide, covering discrimination based on sex, race, age, disability, religion and sexual orientation. The legislation applies from the interview stage onwards, so if you are asked a prohibited question, it is not necessary to be an employee of a company in order to bring a claim. Furthermore, there is no ceiling on the amount of damages that can be awarded for a successful discrimination claim, so this could be an expensive mistake for the potential employer.

Of course you may choose not to answer such prohibited questions, but in terms of practicality if you do not then get offered the job, it can be a somewhat difficult task to prove that the employer's decision was based on your refusal to answer a particular question.

Lastly, what about where you have a previous criminal conviction? Under the Rehabilitation of Offenders Act 1974, you do not have to disclose "spent" convictions (most are spent after 5 years) and it is unlawful for an employer to discriminate against you where you have a spent conviction. Under the Act, however, there are exemptions where you would have to disclose all convictions - including those which are spent- and this includes where the job you are applying for is for a senior role in the banking or financial services industry.

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