

## Hiring someone

### 1. Check you're following discrimination law

When hiring, it's obviously important to find the best person for the job. But you should also check you're following the law on discrimination.

It's usually against the law to discriminate against a job applicant based on any of the following, known as 'protected characteristics':

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

### Indirect discrimination

Indirect discrimination is against the law. In the workplace, indirect discrimination means there are rules or arrangements that apply to everyone, but which in practice could be less fair to someone because of their sex, race or other protected characteristic.

For example, your business is recruiting for a head of sales. You only advertise the job internally. The potential applicants in the business are all men. You could therefore be discriminating indirectly against women.

Another example could be a job advert that states applicants must have spent a specific amount of time doing something (for example, 10 years working in retail).

By doing this, you could be discriminating indirectly against younger applicants. The advert should instead say that the applicant needs to meet a specific level of competence or knowledge. You could also include the main tasks and skills involved in the job.

### When you can ask about protected

## characteristics

In some cases you can ask questions about disability, race or other protected characteristics. If you do this you must follow the law.

Common examples include asking a job applicant:

- if you need to make ['reasonable adjustments'](#) for them, for example making sure that a disabled person coming for interview can access your office
- to complete an [equality and diversity monitoring form](#), to help check your business follows the law

If you ask applicants to complete an equality monitoring form:

- anyone involved in interviewing or deciding to hire them must not have access to the information
- you should not ask applicants to enter their name or any other information that identifies who they are

Other questions about someone's sex, race or other protected characteristics could be against the law.

As this can be a complex area, [call the Acas helpline](#) or get legal advice if you're not sure of the types of questions you can ask.

## When a requirement is crucial or helps a disadvantaged group

You can ask that job applicants have a certain protected characteristic (for example, sex or race), but only if:

- it's crucial for the job (an 'occupational requirement')
- it helps a disadvantaged or under-represented group

### It's crucial for the job

You must be able to prove that the protected characteristic is crucial for someone to do the job effectively.

For example:

- a care worker agency could ask for female applicants, if the person being cared for is female and she said she would be uncomfortable receiving this type of care from a man
- the Catholic church can ask for a priest who is a Catholic

If an occupational requirement is justified and you advertise the job again later, you must check that it still applies.

Because an occupational requirement can be hard to prove, you should get legal advice beforehand.

## **It helps a disadvantaged or under-represented group**

You can ask for a protected characteristic or use it when deciding to hire someone, as long as you can prove you're doing this to help a disadvantaged or under-represented group in your business.

This is sometimes known as 'positive action'. You must also be able to prove that the person is capable of doing the job.

For example, your business has 10 salespeople who are all men, so you know women are under-represented.

When interviewing for another salesperson, you find that 2 applicants appear equally able to do the job. One is a man, the other is a woman.

In the end you decide to hire the woman. This is because she appears able to do the job and women are under-represented in your existing workforce.

According to the law, you must always see if there's a less discriminatory way to make your workforce more diverse.

Even if you believe a certain protected characteristic is essential, you could be challenged if someone feels you've discriminated unfairly. [Call the Acas helpline](#) or get legal advice to check first.

## **Trade union membership**

It's against the law to treat someone unfavourably based on whether they are, or are not, a trade union member.