

Checking if you were discriminated against

3. Checking if you were discriminated against

When hiring it's usually against the law for an employer to discriminate against job applicants because of 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

You can find out [more about protected characteristics](#).

Trade union membership

An employer must not treat you unfavourably because you are, or are not, a trade union member.

Find out [what to do if you believe you've been treated unfavourably](#).

Victimisation

It's against the law for an employer to victimise someone. Victimisation is when someone is treated badly because they've done things like:

- saying that they believe discrimination has happened, to themselves or anyone else
- providing information about discrimination they believe has happened
- challenging someone because they believe discrimination has happened

Indirect discrimination

When someone breaks the law on protected characteristics – for example, an employer chooses not to hire someone because of their race – it's known as direct discrimination.

Some forms of discrimination are indirect and may be less obvious. 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 with a protected characteristic.

For example, an organisation is recruiting for a head of sales. They only advertise the role internally. The potential applicants in the organisation are all men. They could therefore be discriminating indirectly against women.

Circumstances in which employers can ask about protected characteristics

In certain circumstances, an employer can ask questions about a protected characteristic. If they do this they have to follow the law.

Common examples are:

- asking if you need '[reasonable adjustments](#)' because of any disability you have
- asking you to voluntarily complete a form to help check that the business is following the law (often called an equality monitoring form) – anyone who's interviewing or making a decision to hire you must not have access to this information

Other questions about a protected characteristic could be against the law - you can [call the Acas helpline](#) for help to understand if a question you've been asked is legal.

Find out [what to do if you believe you've been discriminated against](#).

If an employer has looked at your social media profile

If you discover that an employer has viewed your social media profile before they made a decision related to hiring you (such as choosing whether or not to interview you), they could have discriminated against you. This is because they may have formed an opinion that relates to a protected characteristic, or an opinion that's unrelated to your ability to do the job.

For example, you've applied for a job. The employer happens to come across your profile on Facebook and discovers a photo that confirms your

race, or a post that indicates your political views. It could be argued that even if they didn't intend to, they've formed a perception of you that is not related to your ability to do the job.

The employer can make a decision based on your social media profile if they can prove it's crucial to the job requirements. For example, if you apply for a job as a social media manager, the employer can argue that they need to look at your Facebook profile to discover how you use social media.

Take care with your personal information

If you're concerned about the information that potential employers may come across, it's a good idea to check:

- the privacy settings of your social media profile
- any information that an employer could access without actually clicking on your profile, such as your profile picture

Be careful about any information you include on jobs websites, or social networking sites that focus on business (for example, LinkedIn). An employer could argue that they're justified in using this information, as it reflects your professionalism and employability.

When employers can ask for a protected characteristic

It's crucial for the job

In some cases the employer can ask for a protected characteristic. They can only do this if they can prove it's crucial in order 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 has said she would be uncomfortable in receiving this type of care from a man.

A group is disadvantaged or under-represented

In some cases employers can legally use a protected characteristic to decide who they employ. They can only do this if they want to increase applications from a group that's disadvantaged or under-represented in their business. They must still be able to prove that the person they hire is capable of doing the job.

For example: a business has 10 salespeople who are all men. It is looking to employ another salesperson. It interviews several applicants. After the interviews it finds that two of the applicants appear equally as capable of doing the job. One of the applicants is a man and the other is a woman. After interviewing, they choose to hire the woman, because she is capable of doing the job and women aren't represented in the existing workforce.

You can [call the Acas helpline](#) if you have questions about a protected characteristic that an employer is asking for.