

Young Workers Legal Service

Pre-Employment Disclosure

There is a lot of competition in the job market today. There are often large numbers of people applying for a small number of jobs. The application and selection process for these jobs is often long and detailed, and people can find themselves being asked very personal questions. These questions are often about their health and medical history.

What form do these questions typically take?

These questions are usually asked in two main ways

- In the application process, usually in the form of a pre-employment medical form.
- In the job interview when employers can ask a whole range of questions.

What sorts of questions are asked?

The pre-employment medical forms can sometimes be quite detailed. They might ask you about

- Your current health status including any medications that you currently take and any significant health conditions or ailments that you suffer from.
- Your medical history including whether you've ever been in hospital or had an operation, or whether you had or have injuries or health conditions

Where do jobseekers stand in this sort of situation?

Well you can refuse to answer, but this usually does not help you win the position. Generally speaking, if you are asked about these issues by your prospective employer, then you have to answer them truthfully. If you lie or mislead your future employer, and this is later discovered, then this may be grounds for dismissal. So if you want the job you'll have to answer these questions, and if you want to keep the job you'll have to tell the truth.

Is there any protection for jobseekers?

- Personal information that is supplied in the application process is protected by the Privacy Act and should be treated confidentially.
- There are also limits upon the questions that employers can ask. Questions should be relevant to the workers' capacity to do the job.

Employers should

- Avoid questions that are broad and open-ended and ask for unnecessary detail.
- Be particularly careful to avoid questions that have the potential to discriminate against workers with a disability or impairment.

Where do employers stand? Can they refuse to employ someone with a disability?

It is against the law for an employer to discriminate against someone who has a physical or intellectual impairment. Employers shouldn't treat workers differently because they have a disability. Employers are also required to make reasonable adjustments in the workplace to accommodate a person with a disability or impairment.

The law does allow employers to refuse to employ someone who can't fulfill the inherent requirements of the job. So a person with a back injury may be refused a job that requires heavy lifting. But this doesn't give employers a license to exclude workers with disabilities, and employers need to be careful that the application process doesn't have this effect.

The nature of the job is important. For example, if you have suffered from epilepsy in the past, this may be relevant for a job with heavy machinery or in a nightclub, but not as relevant for a job in reception.

Why might it be a good idea for workers to tell their bosses about medical conditions?

A lot of people have medical conditions that are perfectly safe if they are correctly managed. As long as the condition is treated and monitored, people can live active lives and be excellent employees. However, if it is left untreated, the consequences can be dangerous or even fatal.

Many of these conditions require small adjustments to provide a safe environment for all people in the workplace. For example, many people with type 1 diabetes need to eat regularly throughout the day and have access to clean facilities to administer insulin injections. Small adjustments like these will allow workers to work effectively and safely. Employers can't make these concessions unless they are properly informed. It's important to realise that both workers and employers have a role in ensuring a safe working environment.

When is a good time to discuss your medical condition with your boss?

We would say that the best time to raise the issue with your boss is after you have been offered the job, but then as soon as possible, and preferably before you start working. Once you have been offered a job, then it is clearer where you stand. Both you and your employer are in a position to discuss how the workplace might accommodate your medical condition. If the job offer is withdrawn after discussing your medical condition, then this may well be discrimination.

What if you are scared to raise the issue with your boss?

It isn't always easy to raise these sorts of issues. Many workers are afraid that if they raise the issue, they may be penalised or even sacked. It might be helpful to involve a representative from your union, or perhaps a trusted friend or relative.

What should workers do if they feel they have been discriminated against in this way?

You should seek advice from

- The relevant trade union
- The young workers legal service