

New Equality Act: Pre employment Health Questionnaires

Background to the changes - Questions:

Q1. When did the Equality Act 2010 come into effect?

Q2. Why are these changes being made now and who commissioned them?

Q3. Does this mean that the PEMQ will no longer be used?

Q4. What are HR departments supposed to do to implement these changes?

Q5. Does this mean that we cannot use our current PEMQ after 1 October 2010?

Q6. What if we use our PEMQ to ask about adjustments needed to attend interview?

Q.7 What happens if I ask questions about health or disability?

Q8. Do all prospective new employees need to be asked if they have any health conditions, or disability, which may require adjustments under the Disability Discrimination Act in order for them to undertake the role for which they are applying?

Q9. If the PEMQ is used at the application stage what information should be given to HR colleagues?

Q10. Could applicants be asked in the application form to give a Yes/No answer to whether they have potential health issues and all Yes answers be referred to OH?

Q11. Will it still be possible to ask candidates if they have disabilities that require special arrangements at interview?

Q12. Will we still be able to ask if candidates wish to use the guaranteed interview scheme?

Q13. Will we still be able to ask about disability in the equality monitoring questions which are separate from the application form?

Q14. Can an employer ask health questions once a job offer, including a conditional offer, has been made and possibly require applicants to undergo medical assessment?

Q15. Will we still be able to ask about sickness absence in our application forms?

Q16. Will we still be able to ask about sickness absence in our reference requests?

Further implications of the changes

Q17. If the organisation finds that the applicant is not fit for the role, due to their health, once they have made a conditional offer, what should they do?

Q18. Won't the withdrawal of PEMQs allow people with serious mental health problems into colleges/work based learning organisations to work?

Q19. How will we be able to identify those applicants with some of the rarer conditions that might affect their capacity to do the job?

Equality Act: Pre-employment Medical Questionnaires

Background to the changes – Answers:

Q1. When did the Equality Act 2010 come into effect?

1 October 2010

Q2. Why are these changes being made now and who commissioned them?

The Equality Act requires employers to make changes to the way that some of them have been conducting pre-employment checks and makes it illegal from 1 October 2010 to ask questions about an applicant's health prior to a post being offered.

Q3. Does this mean that the PEMQ will no longer be used?

The evidence is that the PEMQ is no longer fit for purpose and you should abandon the routine use of PEMQs. While the expectation is that the PEMQ in its current format will no longer routinely be used, there will no doubt still need to be questions that will need to be used to obtain information from some staff groups colleges and workbased learning organisations should review their current pre-employment health screening policies and move to an evidence-based approach.

Q4. What are HR departments supposed to do to implement these changes?

HR departments should start including a request to potential new employees to raise any potential health issues and to ensure that line managers and HR are prepared to deal with these issues when raised.

Q5. Does this mean that we cannot use our current PEMQ after 1 October 2010?

Yes if you were using it pre job offer. There are still restrictions to using a form of questions about the applicant's health once the offer of a post has been made.

Q6. What if we use our PEMQ to ask about adjustments needed to attend interview?

This would be illegal. You may ask a question in the invitation to interview about any necessary adjustments that might be required for interview and you may also ask if the applicant wishes to make use of the guaranteed interview scheme.

The Equality and Human Rights Commission suggests the following approach:

- Don't ask for this information on the application form.
- Ask applicants to tell you this on a separate document or using a covering letter that does not contain any information relevant to deciding whether to take their application further.
- Keep this information separate from the rest of the information an applicant gives you about themselves, whether this is on an application form or not. This will make sure that the information is not used to discriminate unlawfully against them, and that you will be able to show that it hasn't.
- The Equality and Human Rights Commission can take legal action against you if you ask job applicants any health or disability-related questions that are not allowed by equality law. This includes sending them a questionnaire about their health for them to fill in before you have offered them a job.

Q7. What happens if I ask questions about health or disability?

A job applicant can bring a claim against you if:

- you asked health or disability-related questions of a kind that are not allowed
- they believe there has been unlawful discrimination as a result of the information that they gave (or failed to give) when answering such questions

Q8. Do all prospective new employees need to be asked if they have any health conditions or disability which may require adjustments under the Disability Discrimination Act in order for them to undertake the role for which they are applying?

Yes. This should be done by HR as part of the process of offering a post (subject to the usual checks).

Q9. If the PEMQ is used at the application stage what information should be given to HR colleagues?

The PEMQ must not be used at the application stage; questions about the applicant's health prior to an offer of appointment are illegal from 1 October. The content of a PEMQ, where used, would be in confidence and should not be shared with HR, management or any third party.

It has been accepted practice in a range of organisations for a number of years that PEMQs were only opened after the conditional offer of a post was made.

Only the successful applicant's PEMQ was opened, and any PEMQs for unsuccessful applicants were destroyed or returned to them unopened. HR should not see the content at any stage in the process as this would be illegal. The information contained in the PEMQ would be medical and in confidence.

Q10. Could applicants be asked in the application form to give a Yes/No answer to whether they have potential health issues and all Yes answers be referred to HR?

No. It will be illegal from 1 October to ask questions about an applicant's health prior to conditional offer of a post.

Q11. Will it still be possible to ask candidates if they have disabilities that require special arrangements at interview?

Yes. You should ask them in the letter of invitation to interview. Ask applicants to tell you this on a separate document or using a covering letter that does not contain any information relevant to deciding whether to take their application further.

Q12. Will we still be able to ask if candidates wish to use the guaranteed interview scheme?

Yes. This should be done as it has in the past

Q13. Will we still be able to ask about disability in the equality monitoring questions which are separate from the application form?

Yes. Provided that it is done in such a way that candidates do not perceive it as a means of asking about their health prior to appointment.

Q14. Can an employer ask health questions once a job offer, including a conditional offer, has been made and possibly require applicants to undergo medical assessment?

Yes. The Equality Act 2010 does not place restrictions on what can be asked once the offer of a job has been made

Q15. Will we still be able to ask about sickness absence in our application forms?

No this will be illegal as it will be seen as asking about health or disability by another route.

Q16. Will we still be able to ask about sickness absence in our reference requests?

Provided that references are obtained after the offer of a post you will be able to ask about sickness absence history.

Further implications of the changes

Q17. If the organisation finds that the applicant is not fit for the role, due to their health, once they have made a conditional offer, what should they do?

In the first place they should attempt to make reasonable adjustments in accordance with the Disability Discrimination Act (DDA). If this is not possible and they believe they have justification for doing so they may withdraw the offer of employment.

Q18. Won't the withdrawal of PEMQs allow people with serious mental health problems into colleges/work based learning organisations to work?

Suffering from mental health problems is not a barrier to working in colleges or work based learning organisations and does not generally present problems for learners. This is an issue that was not generally identifiable through use of the PEMQ and any issues should continue to be picked up in the same way as they have been previously.

Q19. How will we be able to identify those applicants with some of the rarer conditions that might affect their capacity to do the job?

These were not necessarily picked up in the past by using a PEMQ so there should be no more risk involved in using the new process