

Chapter 1

Recruitment and Pre-employment Health Assessment

All employers, whether they employ one or many staff, have to know the fundamentals of employment rights today. Failing to do so can be costly financially and can risk damage to the organisation's reputation and its employment relations.

There is a myriad of regulations covering all forms of discrimination in employment. Going some way towards streamlining matters, a single Equality and Human Rights Commission was established in October 2007, under the Equality Act 2006, which replaced the former Equal Opportunities Commission and the Disability Rights Commission. The Equality Bill is to come into law in April 2010. Its purpose is to consolidate the various discrimination statutes and offshoot regulations. Within the new regulations will be a simplified approach to indirect discrimination, achieved by creating a test of whether a particular disadvantage has arisen where a 'provision, criterion or practice' has been applied. Employers may be able to justify indirect discrimination if they satisfy the test of reliance on a 'proportionate means of achieving a legitimate aim'. Although the 'genuine occupational requirement' defence will be available in all discrimination claims except disability, it will remain arguable that there were no reasonable adjustments that could be carried out to accommodate a disability. However, on a cautionary note, the scope of such defence is narrow and employers need to have given genuine consideration to the law at the time they made their decisions, and not when preparing a defence to an employment tribunal claim.

The starting point for understanding and adhering to the required standards begins when recruitment is contemplated. It is too late if thought is given to non-discriminatory practices after the recruitment process has begun. In 2008, two high profile cases showed the high price employers can pay for their alleged mishandling of recruitment. We will cover the cases of Channel 5 and Selina Scott in which age discrimination was alleged, and the case of the hair stylist who covered her hair with a scarf, was not offered a job and then alleged discrimination on religious grounds. Our case law examples in this chapter will demonstrate that those who are responsible for making offers of employment require a basic knowledge about employment rights, and health and safety obligations.

In some organisations recruitment is a responsibility vested in one person. In larger organisations there may be a multi-disciplinary team of people involved, for example human resources and/or external recruitment agencies, working

with any occupational health services. Occupational health may be asked to provide an assessment of the applicant's suitability in relation to their health, for the post for which they have applied, based on the information provided by the candidate and prospective employer. There is much more that needs to be considered, particularly from the legal perspective, not only to comply with existing legislation but also in order to avoid future problems both for the employer and the health of the worker. This chapter will address the key legal issues of recruitment and pre-employment, highlighting the important role management and occupational health services can play in preventing potential problems and promoting a healthy workforce.

Employment law perspectives

The recruitment process begins to have legal implications from its very outset. Following good practice, in a pre-considered and standard format, each time appointments are planned can avoid many pitfalls and potential legal costs that might otherwise arise.

Timing of general considerations, including when to involve occupational health, is better done sooner than later. All too often problems occur when the employing organisation considers that the legal aspects of recruitment only become relevant when an offer of employment is to be made. In fact the wording of the job advertisement, any job description details provided, the title of the job, the person specification skills and experience quoted, all have legal implications that need to be considered by employers long before offers of employment or contracts are issued.

Once the employee joins the organisation, the recruitment process is still not quite completed; the written contract of employment must be issued, together with key policy documents, such as the health and safety policy, staff handbook, internal discipline, grievance and appeals procedures, equal opportunities and anti-discrimination policies, etc. Today these policies can often be found on the company intranet and so are readily available to most workers. But training and induction are vital requirements to be carried out as soon as possible so as to complete the recruitment process.

Fire and emergency procedures training are very important requirements in induction training, along with other training on policies and procedures, use of equipment generally and any particular risks and hazards. Chapter 3 covers further details of health and safety at work matters.

Records of induction training should be kept as evidence that it has taken place. The recruitment plan should also include a clear protocol as to the keeping of records of all applications, in line with the requirements of data protection law and related best practice guidance.

It is worth remembering that internal transfers or internally promoted employees may require health assessment for the new post as well as induction training for their new role. There are also certain situations that require special

attention, such as the employment of young people, those returning to work after sickness absence or sabbaticals, people who have special health considerations to be taken into account and people who have workplace adjustments which may need to be checked and reviewed for appropriate compliance.

Preparing to recruit

There is no legal obligation on employers to advertise vacant posts to which they hope to appoint. But it can be difficult for employers to show that they are following good practice in promoting equal opportunities at work if they do not advertise appropriately. For example, if a particular element of the local or national population is under-represented within the workplace currently, then efforts should be made to give such people the chance to be considered for appointment. It may also be that the workforce overall appears at one level to match the local demography, whereas closer examination of the data could reveal that particular groups of people are under-represented at more senior levels.

Generally the minimum requirement for good practice is for posts to be advertised internally. But employers must bear in mind the need to ensure, as previously mentioned, that the spread of people is fairly represented at each level within the organisation. A company policy that has an adverse effect on one group of people, who are protected from discriminatory practices by law, can be held to be indirect discrimination. So internal advertising, while justifiable in many cases, can carry with it an inherent risk of recruiting externally at lower levels only and so could lead to claims of indirect discrimination. The internal/external advertising question should be a considered choice in each case rather than a norm.

The obligations on employers to comply with anti-discrimination and equal opportunities legislation begin at the point of advertisement planning. The wording of the advertisement is important. Careless wording about the job, the person specification criteria given, and even the method of application can lead to major problems. Web advertisements or internal notices about employment opportunities require the same standards of non-discrimination as any other form of published advertising. There has been a particular focus on the careful wording of job advertisements since the introduction in October 2006 of the regulations prohibiting age discrimination.

The good news is that pre-planning in recruitment will really help to avoid potentially costly and much more time consuming problems that might otherwise confront an employer. Key anti-discrimination legislation to be taken into account in the preparation of and throughout the recruitment and appointment process include:

- the Equal Pay Act 1970
- the Sex Discrimination Acts 1975 and 1986
- the Race Relations Act 1976 and 2000

- the Disability Discrimination Act 1995
- the Disability Discrimination Act 1995 (Amendment) Regulations 2003 SI 2003 No. 1673
- the Employment Equality (Religion or Belief) Regulations 2003 SI No. 1660
- the Employment Equality (Sexual Orientation) Regulations 2003 SI No. 1661
- the Employment Equality (Age) Regulations 2006 SI No. 1031
- Equality Act 2006 (Dissolution of Commissions and Consequential and Transitional Provisions) Order 2007, SI 2007/2602

Case law: discrimination alleged during recruitment

Rainbow v. Milton Keynes Council, EAT, 1200104/2007

Advertising for applicants with less than five years' experience was age discrimination.

Rainbow was a 61-year-old teacher with 34 years' experience. Her school sought applicants for a new post which would 'suit candidates in the first five years of their career'. R applied nonetheless but was not successful. Her claim of indirect discrimination was upheld: the employer had focused on candidates with less than five years' experience in order to lower staff costs. Cost factors alone were not held to justify the ensuing result of age discrimination.

Selina Scott v. Channel 5, Reports from CIPD Member Resources September 2008 and Daily Mail, 6 December 2008

One of the most high profile age discrimination cases did not reach a public hearing. Broadcaster Selina Scott brought tribunal proceedings in which it was alleged that she was not appointed as maternity leave cover for Natasha Kaplinsky on Channel Five News because at 57 she was considered to be too old. Isla Traquair, 28, and Matt Barbet, 32, were offered the role instead. According to press reports, Ms Scott and Channel 5 have settled their claim for a six figure sum estimated to be around £250,000.

Bushra Noah v. Sarah Desrosiers trading as Wedge, ET 2201867/2007

In a widely reported religious discrimination case, N's application for a hairstylist job was rejected because she covered her hair with a headscarf. She brought employment tribunal claims for direct and indirect religious belief discrimination. She was awarded £4000 for injury to feelings. In fact, her claim for direct discrimination actually failed because the tribunal found that Wedge would also have turned down non-Muslim applicants who wore headscarves at work. But the claim for indirect discrimination succeeded because Wedge could not justify their requirement that stylists display their hair while at work.

Job descriptions

A key part of recruitment is the preparation of the job description. This should summarise the main duties and responsibilities of the post, give details of accountability and make mention of the need for change and

flexibility. A future change provision stating words along the following lines might be a sensible standard clause:

This is an outline summary of the key duties of the post/job as currently required. The nature of the business requires flexibility and change to skills and duties over time. From time to time job descriptions will need to be reviewed and revised in consultation with the postholder to ensure they relate to the job actually being performed, or to review and incorporate changes expected.

If the job is likely to require particular skills, such as driving, then this should be specified and include the type of licence required. If the nature of the post is such that mobility is a factor then this, too, should be stated in the job description. It is also important to state any requirements for travel or foreign postings. It is not likely to be helpful, however, simply to make these kinds of clauses standard in job descriptions unless they are genuinely likely to feature as a part of the duties.

Using the job description as the basis for an objective specification follows on next. This should enable the skills, qualifications, experience and characteristics to be drawn up. Often, within those specifications, a minimum level and a desirable level will be set. Care needs to be taken to ensure that desirable attributes are objective requirements so as not to fall foul of the law.

The job description will serve as the key source of information from the prospective employer to the occupational health adviser who is assessing candidates. Without clear information and plain language describing the main duties of the post, health assessments will not be able to be comprehensive. Occupational health will also provide suggestions as to any adjustments that the employer might consider making to the workplace and working conditions relative to the health needs of the individual. This guidance is reliant on good information via job descriptions and person specifications, which will enable proper risk assessment and also enable occupational health to give out the best advice in this respect.

Advertising

Whatever the minimum requirements expected of applicants, advertisements should state this. If there are particular health or related physical criteria that genuinely apply to all applicants for the post being advertised, it is wise to consider and risk assess these in general with an occupational health adviser at the very start of recruitment planning. Since December 2006, it has been unlawful to advertise indicating favouritism towards applicants not having any disability, or any particular disability, or to indicate any reluctance to comply with the duty to make reasonable adjustments.

It is unlawful to word recruitment advertisements in a discriminatory manner. It was not so long ago that job adverts would regularly be seen looking for a 'Girl Friday', which would today render both the advertising publishers

and the prospective employer in danger of legal action. But employment rights change and develop rapidly. Until recently, many employers would advertise seeking a specific age range which often favoured the younger applicant and, by seeking experience which was not an objective requirement, sometimes went against applications from older workers. Since the Employment Equality (Age Discrimination) Regulations 2006 took effect in October 2006, once more legal challenges to previously accepted criteria and language have taken place – some justified and some perhaps not.

Case law: job advertisement wording

Reports of 22 claims by one applicant citing age discrimination in recruitment: People Management, CIPD, Law at Work, p. 37, 11 December 2008

Margaret Keane, aged 50, was reported in 2008 to have made some 22 employment tribunal claims alleging age discrimination. K applied for positions which appeared to favour younger applicants by using such wording as: 'entry level role', 'newly qualified', etc. When her job applications were unsuccessful she then made complaints alleging age discrimination. Up to 12 firms are reported to have settled rather than take on the cost and risk of a full tribunal case hearing. She is thought to have netted up to £100,000 in settlements of between £4000 and £10,000 per complaint. But in March 2008, five cases were heard together by the London Central Tribunal. The barrister acting for the employers told the tribunal: 'Miss Keane has suffered no detriment as these were not bona fide applications. The evidence suggests she made these applications with the sole intention of bringing a claim, not doing the job.'

McCoy v. McGregor & Sons Ltd and Others, NIIT Case No. 237/07

Mr McCoy, aged 58, saw a job advert in Northern Ireland, which stated that the company was looking for someone with 'at least five years' experience' and who could offer 'youthful enthusiasm'. At interview he was questioned about his age and whether he had the necessary drive and motivation to do the job. His job application was not successful and he brought a tribunal claim alleging age discrimination. This latter application was successful. The tribunal agreed that the phrase 'youthful enthusiasm' in the job advert and the focus of interview questioning indicated the employers had linked this particular applicant's age with his ability to deliver the drive and motivation to the job.

Care must be taken with all the material provided in advertising the post. Wording is crucial, but so, too, are the images presented in the advert itself and in any accompanying literature. Good practice considerations might be given to offering applicant information in other formats, for example in other languages to address and encourage racial balance, in large print or Braille, on computer email or disc to enable and encourage sight or hearing disabled applicants.

Many organisations have a standard advert layout which may include, for example, statements concerning the organisation's aims in equal opportunities and treatment. These can be the positive statements genuinely intended by the

wording, but any inferred promises from them will need to be honoured. For example, an employer's statement that it will offer an interview to any disabled applicant may not be wise unless that promise can really be met, whereas one which states that an interview will be offered to any disabled candidate who meets the qualification criteria for the post might be a more prudent approach.

Case law: timely recruitment decisions

In the case of the National Air Traffic Service and Ben Sargeaunt-Thomson¹, had a pre-planned recruitment protocol been in use by the multi-disciplinary team from the start, then perhaps a great deal of upset and cost could have been avoided. Mr Sargeaunt-Thomson had a long-standing ambition to become an air traffic controller. He passed all the required entry tests and came through the interview selection process with flying colours despite stiff competition. He was offered his dream job subject to a satisfactory health assessment. At that stage his job offer was withdrawn on the grounds that no suitable workstation, including vital display screen equipment, could be adapted to take account of his height. At 6 feet 10 inches, Sargeaunt-Thomson argued that NATS recruitment policy was discriminatory as more men than women are likely to be tall. Despite his having gone on to be appointed with Eurocontrol as a trainee with the air traffic control service in Luxembourg, where his workstation could be adapted for his height, the tribunal did not support his claim. The desks at NATS in use at that time were designed for people who were between 5 feet and 6 feet 1 inch tall, and the Southampton Employment Tribunal accepted that in this particular case the problem could lead to an adverse effect on the ability to do the job safely. Although NATS reportedly stated that it was pleased not to have been found to have a discriminatory policy, and Mr Sargeaunt-Thomson found an alternative post, both parties might have wished that the height criterion had been properly thought through and brought to the attention of potential applicants at the outset. Instead a lengthy recruitment and selection process of over two years took place, disappointment was caused to an individual, and legal action resulted over an issue which could perhaps have been addressed at the initial stages of planned recruitment by a multi-disciplinary team.

Applications

Some employers seek applications by curriculum vitae, by letter, online methods or by paper application form. An advantage of using application forms is the standardisation of information required of each and every candidate, making fair comparison easier and ensuring that all necessary information is given. Where the employer does not use application forms consideration should be given to asking applicants to ensure that they give precise and particular information on specified matters required by the company in their CV submissions. It is important good practice to invite applicants to advise of any special needs they would like to be considered so as to enable the organisation to ensure that no applicant is unfairly disadvantaged on account of disability. A written notice to this effect should be given to all applicants. It is worth bearing in mind that many

people who have disabilities would in no way regard themselves as suffering from ill health. However, where all applicants have been invited to advise of any adjustment needs they require to accommodate their disability, but then fail to suggest these, they could have some difficulty in later trying to prove that a prospective employer knew or ought to have known of their disability.

The Disability Discrimination Act 1995 (DDA) requires that employers ensure they do not treat disabled people less favourably than others during the recruitment process. Along with the Act itself, there is a Code of Practice which is a useful guide as to suggested good standards in employment. The legal duty to make reasonable adjustments applies at the recruitment stage and not just to those in employment. This is at variance to some other forms of anti-discrimination legislation which generally requires that all applicants be treated equally. The disability discrimination legislation requires that employers and prospective employers make arrangements where possible to ensure that disabled people are not placed at a disadvantage to non-disabled people. Under section 4 of the DDA it is unlawful to discriminate against a disabled job applicant:

- in the arrangements made for determining to whom employment should be offered, s.4(1)(a) or
- in the terms on which employment is offered, s.4(1)(b) or
- by refusing to offer, or deliberately not offering, the disabled person employment, s.4(1)(c)

Applicants should be encouraged to provide relevant information about their health and personal details. Employers are well advised to give assurances as to confidentiality and to make clear that their purpose in seeking such information is only to enable proper monitoring and compliance with equality of treatment and to consider reasonable adjustments. Many people are sensitive to providing information about their gender, marital status, ethnic origins, age, nationality or any disability, for a variety of understandable reasons. Such concerns can be taken on board and positively addressed in the recruitment process. For example, people can be given assurance at the time the request for information is made by the employer to confirm that their data will be treated as confidential in accordance with data protection standards (see Chapter 2). The law requires that only necessary and relevant information is sought and appropriately retained. It is good practice to consider storing medical information, age, ethnicity, etc. separately with human resources and occupational health if this service is available. If not, then all confidential information must be kept securely to ensure proper privacy and legitimate management access.

Information which comes to the attention of the employer must be fairly and properly used. It is worth bearing in mind that many people have a health or learning disability which might come under the definition of a disability within the meaning of the DDA, but which they do not consider means that they are disabled. The DDA defines a disability as *'a physical or mental*

impairment which has a substantial and long-term adverse effect on his or her ability to carry out normal day to day activities'.

For many responsible employers a significant problem arises because job applicants and employees do not tell them of any health concerns relevant to the job. They may choose not to do so for fear of discrimination upon disclosure of the information, or they may not regard the matter as relevant to their working life. An employer, or prospective employer, is obliged to make reasonable adjustments when he knows or ought reasonably to know about a person's disability. If an employer has encouraged applicants from the start and throughout the recruitment process to give information about health matters relevant to the job, then this will usually form a good basis for defending against claims should the applicant later be found not to have given information that was reasonably requested. Questions as to any personal information should be limited to what is actually necessary, for example seeking disability related information for the purpose of making reasonable adjustments during the selection process and if appointed. The guiding basis for seeking sensitive information on health, age, criminal records, immigrations status, etc. is that employers must be able to:

- explain the valid purpose for collecting the data
- assure applicants that the information will be used for specific purposes
- confirm that the data will be held as confidential
- show that the information has been requested of all applicants

Job application forms are advocated as a means of ensuring consistency, monitoring and proper records. The example below shows a page which can be added to a standard job application form in order to request confidential information from all applicants.

Example page in a job application form

Confidential management information: the information given in this section will be retained as private and confidential within employment records in accordance with the principles set out in the Data Protection Act 1998.

Do you have the legal right to work in the UK? YES / NO

Please give details of visa or work permit status (including type and date of expiry):

Date of birth:

Have you ever been convicted of a criminal offence? YES / NO**

(**This declaration is subject to the terms of the Rehabilitation of Offenders Act 1974 in relation to spent conviction declarations.)

Do you need any health related adjustments or adaptations to assist you during recruitment or at work? YES / NO

Have you had/are you suffering from any health problems which may have been caused or made worse by carrying out a particular form of work? YES / NO

If yes, please provide further details:

.....

I confirm that to the best of my knowledge the above information is correct. I accept that providing deliberately false information or withholding information could result in non-appointment or, if discovered after appointment, disciplinary sanction including dismissal.

I understand that criminal record and immigration status checks may be carried out on information provided in this form.

Signature: Date:

CV Attached: Yes/No

Selection

The interview process, together with any selection tests that are used, needs to be planned with care and advice from human resources and occupational health so as to check for fairness and legal compliance. Pre-employment medical screenings should provide the means of assessing someone's ability to perform the job and identifying whether adjustments can be suggested to accommodate the needs of applicants. This is important throughout the interview and selection process. The choice of venue, for example, must be accessible to all candidates. If aptitude or other testing is used, then any special health-related needs for candidates should be accommodated where possible. Any equipment, printed materials, etc. should be checked to ensure that disabled people are not disadvantaged, for example by using enlarged print for those with sight problems, by using written communications for those with hearing problems, and by providing workstation adaptations for those with mobility needs. Employers must consider reasonable adjustments for disabled people throughout the recruitment and selection process when the need arises.

All evaluations, including interview notes and any scorings, must be fairly and objectively considered. Records should be kept so as to deal with queries or challenges. Many people value some individual feedback being given to them as to why their application has not been successful. When this is properly provided even disappointing news is often accepted as fair and non-discriminatory and, if not, evidence is available to the employer to defend allegations.

Case law: disability awareness in recruitment

Ridout v. TC Group, 1998, IRLR 628

Ridout noted in her application that she suffered from photo-sensitive epilepsy which was controlled by drugs. She came for the interview wearing sunglasses.

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She commented that the fluorescent lighting in the interview room might affect her condition. The company assumed that she had the sunglasses ready in case they were required to adjust the effect of the lighting. When R's application was unsuccessful she brought a claim under the DDA. The ET and then the EAT found against her. In reaching their decision, the tribunals considered the Section 6 duty to make reasonable adjustments and the application for Section 6(6) provisions which state that 'Nothing in this section imposes any duty on an employer in relation to a disabled person if the employer does not know, and could not reasonably be expected to know . . . that the person has a disability.'

Smith v. Churchill Stairlifts plc, 2006, IRLR 41, IDS Brief 795

This case reached the Court of Appeal and its findings offer guidance as to the employer's duty to make reasonable adjustments during preliminary training. Smith suffered from lumbar spondylosis and he could not lift heavy objects. His application for a sales job was successful and he was offered a place on the company training course. This involved participants having to carry a sample cabinet as a sales tool. At this point, S was no longer deemed to be able to participate in the training and his place was rescinded. The court found that the employer's arrangements had placed S at a substantial disadvantage to the other nine interviewees accepted for training, which meant that the company's duty to make reasonable adjustments had been triggered and they had failed to make the proper considerations. He had been discriminated against on the grounds of his disability.

Offers of employment

If a job offer is made and accepted then a legal contract exists between the parties from that point. It is a misconception that can lead to costly litigation to assume that the employment contract only comes into force when the employee takes up employment and/or when the written terms and conditions of employment have been signed by the parties. Each element of the recruitment process can contribute to the employment contract, including advertisements, job descriptions and job offers made verbally or in writing.

Some employers make job offers conditional upon their receiving satisfactory medical reports and/or positive references. Any retraction of a job offer made, whether conditional or not, could lead to legal challenge. Fairness and following proper procedures also applies during any probationary period. Claims on conditional job offer retractions or during probationary periods could arise, for example, for breach of contract and result in an award to cover the notice period that ought to have been expected in the position. More costly still is the potential claim of discrimination on the grounds of race, sex, disability, religious belief, part-time status, sexual orientation, age, etc. There is no upper limit on the award levels tribunals can make in discrimination cases.

When a job offer is made, whether verbally or in writing, which is conditional upon a satisfactory medical report, it is prudent to advise the prospective employee not to resign their current post until a job offer is confirmed to them in writing. This will be after all screenings for references and

health have taken place. It is much more likely that an individual will take legal action if they have resigned from a substantive position on the strength of a perceived job offer which is subsequently withdrawn. If an applicant's pre-employment health screening indicates a potential problem this is likely to be a matter of concern to that person. Aside from their disappointment in perhaps not being successful in their job application, an unexpected health problem may also cause anxiety. Best practice is to ensure that all occupational health matters have been clarified before job offers are made, in the best interests of all concerned.

Case law: disability issues

In *Williams v. J Walter Thompson Group Ltd* 2005 IRLR 376, IDS Brief 785, the employer recruited Williams knowing that she was blind and would require training. Unfortunately, they failed to assess the scope, cost and time of the necessary training that would be required for her to become competent in the job. When her employment was terminated the employer was held to have discriminated against her on the grounds of her disability by failing to provide her with suitable work and adequate training. Their arguments as to technological difficulties and financial costs were not accepted as justification because the employer had known at the outset that adjustments were necessary. The advice of OH and HR during the initial recruitment stages could have been crucial in avoiding the problems that followed.

In *Grainger v. Record Automatic Doors (UK) Ltd*, ET Case No. 2303638/05, G was dismissed from his post as a warehouse assistant on the grounds that at interview he had misrepresented his fitness to do the job. G suffered from an elbow condition, which was effectively managed by painkilling medication. He was able to perform his job but when he sought time off to go for surgery he was dismissed. The tribunal referred to the Code of Practice advice that employers should avoid making assumptions and had failed to consider properly any required adjustments, medical advice and consultations with the employee. As a result, they had discriminated against Mr Grainger on the grounds of his disability.

In *Paul v. National Probation Service* [2004] IRLR 190, Mr Paul applied for two positions: one as a community care supervisor working one day a week and the other for a handyman job which was also part time. He had told the prospective employer that he suffered from chronic depression for which he was being treated by consultant psychiatrists. He was offered the supervisory position subject to a satisfactory occupational health report. When this was received, the employers withdrew the supervisory job offer and they offered him the handyman position instead. The OH adviser stated that supervisory duties might be stressful and that therefore he be given the handyman post and then be referred back for re-assessment in three months time as to suitability for the other post. The tribunal found against the employer. He had suffered discrimination on the grounds of disability because the employer should have more carefully considered the OH report, looked at inconsistencies, considered reasonable adjustments and the employer was found to have been wrong not to have taken a report from a psychiatrist as to his fitness for the job.

In *Williams v. Channel 5 Engineering Services Ltd*, IDS Brief 609/13, the employer failed to seek information about disability in the job application process and so,

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even though the person who interviewed him was told that Mr Williams was deaf, the information did not get taken on board when the training for the job began. As a result Channel 5 Engineering was found to have discriminated against Mr Williams by their failing to put in place the reasonable adjustments necessary for him to complete the training and in so doing treated him less favourably due to his disability. A reasonable adjustment would have been to provide subtitled training videos.

Adjustments must be reasonable and be directly related to the job. This is exemplified well in the case of *Kenny v. Hampshire Constabulary* [1999] IRLR 76. It was held that the employer was not obliged to provide a carer to accompany Ms Kenny to the lavatory and assist her as required due to the disability she suffered as a result of cerebral palsy.

In *Murray v. Excel Airways Ltd* [2001] ET Case 2303006/0, the applicant was offered a position as cabin crew subject to satisfactory references and medical screening. When the company received her medical questionnaire information they rescinded their offer of employment on the grounds of medical advice they had received. A GP report also obtained noted that Ms Murray had problems in managing her diet and insulin. This, coupled with the nature of the duties, which could present problems with regular meal breaks, meeting dietary requirements and health and safety of passengers in an emergency, lead to their considered decision that they could not offer the post. The tribunal agreed with Excel Airways. Genuine health and safety issues will take precedence over all other considerations in making adjustments and accommodating health concerns at work.

In *Plimley v. Newcastle College* [1999] ET Case No. 6402533/99, the tribunal found that Ms Plimley had not been discriminated against by the college when the occupational health doctor decided she was not fit to do the job because she might be likely to suffer from stress-related health problems. She had applied for vacancies in a department which was known to work under pressure. On the medical questionnaire she noted that she suffered from high blood pressure and she was taking medication usually prescribed for depressive conditions. The case demonstrates the value of the occupational health department being told the details of the job to enable them to advise, of risk assessment programmes being completed and objective evaluation being properly conducted by the recruitment team.

Recruitment checklist

- ✓ Job description
- ✓ Person specification
- ✓ Application process
- ✓ Risk assessment
- ✓ Occupational health, human resources and health and safety alerts
- ✓ Define special considerations: use of equipment, driving licences, criminal record checks, vaccinations, etc.
- ✓ Advertising: images, wording, compliance and circulation
- ✓ Applications: define information required of applicants and method; invite requests for adjustments to meet disability needs
- ✓ Interview and selection: fair process and reasonable adjustments accommodated and communicated

- ✓ Occupational health clearance, advice pointers, suggested workplace/practice adjustments, risk assessment review
- ✓ Checks on all applicants: references, identity, qualifications, licences, criminal record checks (as applicable), right to work in UK
- ✓ Offer of employment – if applicable conditional offer
- ✓ Issue terms and conditions of employment, handbooks, policies, etc.
- ✓ Acceptance by employee
- ✓ Training
- ✓ Induction

The Equality and Human Rights Commission issues codes of practice and guidance available through their website: www.equalityhumanrights.com. These codes are practical guidance rather than statutory requirements or regulations. However, courts and tribunals can take them into account as evidence of good practice or failings.

Section 7 of the Code² provides useful examples and guidance as to the full range of recruitment issues. Useful pointers are provided to assist employers in developing job descriptions and person specifications which are fair, objective, relevant to the duties of the post and non-discriminatory. Sound advice is provided to show the dangers of job requirements that are too widely set, or careless wording which could lead to litigation. They suggest, for example, avoidance of the stipulation that applicants need to be 'active and energetic' when the nature of the job is essentially sedentary. The advice cautions against blanket exclusions and gives a good example of this in a situation where an employer suggests that persons who suffer from epilepsy will not be considered for driving jobs. In fact jobs which require only an ordinary driving licence need not necessarily exclude those who have not suffered an epileptic episode in the period specified by the DVLA and who are entitled, therefore, to hold a driver's licence and obtain insurance cover.

Occupational health perspectives

What is occupational health?

Occupational health is not a new medical discipline; it has been around in some form or another for several hundred years. The father of occupational medicine is claimed to be Dr Ramazzini, who published the first edition of his most famous book, the *De Morbis Artificum Diatriba* (Diseases of Workers) in 1700. This was the first comprehensive work on occupational diseases, outlining the health hazards of irritating chemicals, dust, metals and other abrasive agents encountered by workers in 52 occupations. Occupational health used to be called industrial medicine but with the changing world, advances in technology, the advent of computers and more service industries it was changed in the early 1950s to 'occupational health' and the term 'workplace health management' is often used today to describe its remit.

The twelfth session of the joint International Labor Organization/WHO Committee on Occupational Health, Geneva, 1995, set out the objectives of an occupational health programme as follows:

- to maintain and promote workers' health and working capacity
- to improve the working environment and make it more conducive to safety and health
- to develop work organisation and the working culture to support health and safety and promote a positive social climate and smooth operation, which can also enhance productivity

With these objectives in mind it is important to fit the right person to the job, but also to make sure that the job fits the person because this is the beginning of maintaining the worker's health and working capacity. Part of management and human resources' responsibility is to ensure that the right person is employed, taking into account the job specification and the qualifications and experience of the applicants. Occupational health, and health and safety personnel support this by advising on aspects of the job that may affect the health of individual, and by advising management on both mental and physical health-related matters concerning the individual. Because of this there are specialised professionals in this field and occupational health and safety may consist of:

- occupational health physicians
- occupational health nurses
- physiotherapists
- ergonomists
- occupational hygienists
- health and safety engineers
- occupational psychologists

The professional codes of ethics that cover occupational health physicians and nurses, and certain other qualified professionals such as chartered physiotherapists and psychologists, means that safeguarding the information received from individual workers and the information that can be given to employers is set by confidentiality standards.

Health assessment

Health assessment for fitness to undertake a job also has a long history, originating from the times when young men were required to undertake tests of endurance for their tribal initiation as warriors³. Of course today this would contravene all sorts of legislation in the UK. Before even getting to the situation of assessing the health of individuals and their suitability for employment in a given post there are a host of rules and regulations to be considered, not to mention a few myths to be dispelled. There are many variables to consider when employing people. The Harriss, Murugiah & Thornbory 'Fitness to work framework of assessment',

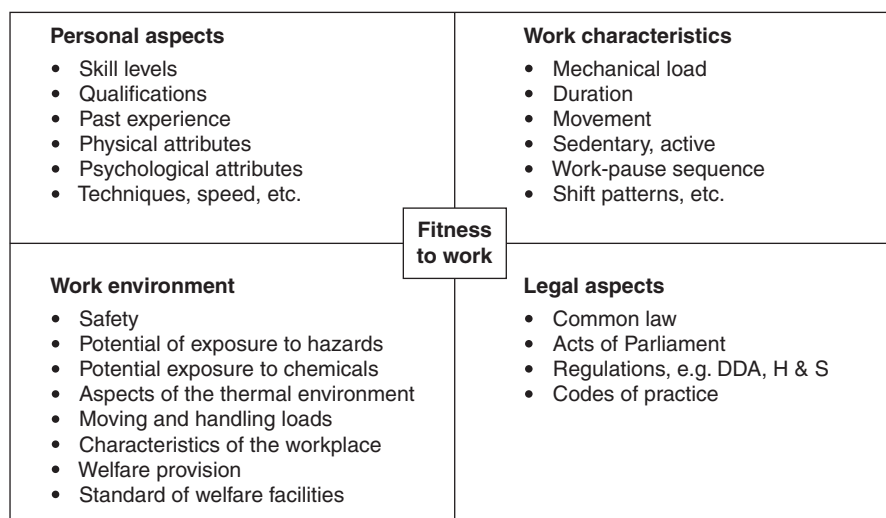


Fig. 1.1 Fitness to Work Framework. Murugiah S, Thornbory G, Harriss A 2002.

see Fig. 1.1, is a useful tool in helping to ensure that assessment is comprehensive, equitable and transparent.

Assessing the skill levels of workers is the job of management, but skills can be impaired by underlying physical or mental health problems. Workers may be aware of this and may not disclose this at pre-employment job applications or interview. It is believed that the confidential nature of occupational health helps to overcome this dilemma, but this will depend on the confidence and the relationship the organisation displays in the occupational health service as well as the system used for health assessment. Job applicants may not see the relevance of disclosing personal medical information, or they may not fully understand the implications of their medical condition. Much will depend on the nature of the enquiry, whether or not it is specifically job related and the system used to acquire the information. The existing political climate also has a bearing as to whether there is high or low unemployment. If the applicant is likely to be unemployed, or is in competition with others then he may feel compelled to take part in the process⁴, or it may be that he withholds vital information about his mental or physical condition. See case study 1.1.

Occupational health case study 1.1

A qualified and experienced occupational health nurse was employed by a company. The job was peripatetic and involved visiting other branches of the organisation and so a valid driving licence was required, which she possessed. Once she was employed the nurse did not seem to be making regular visits to the branches and was often late for appointments. The branch managers with whom she had booked appointments to visit complained about this and the infrequency of the visits. The nurse said that it was

(Continued)

due to the poor bus service from the village where she lived and that she preferred to travel by public transport than to use her car. Her line manager investigated the bus timetables and found that the nurse had not been entirely truthful about the bus times and so tackled her on this and the nurse agreed to make more effort with her visits in future. Shortly after this she had a serious car accident whilst on route to one of her appointments. It subsequently transpired that the nurse suffered from epilepsy and diabetes and had not declared either of these conditions on her health declaration form as she was concerned she would not get the job. As she had a valid driving licence and her epilepsy was under control this need not have prevented her from being employed. The occupational health service would have said she was 'fit for employment with certain provisos' and explained these and then her manager would have been able to offer more support with regard to the frequency and timing of the visits. This might have prevented an accident and the nurse losing her job.

In order to be able to make professional, evidence-based decisions on the mental and physical suitability of a prospective employee for a particular job, the occupational health practitioner needs to be thoroughly aware of the job requirements and any risks or health hazards within the duties relative to the individual. However, for evidence-based practice it is important to note Whitaker and Aw's 1995⁵ research, which concluded that the health assessment process has limitations in its ability to detect clinical conditions and to predict the health status of employees once they are employed.

Assessing the risks

Good employment practice requires prospective employees to be given a job description. Health and safety law requires that a risk assessment be undertaken to identify the hazards and quantify the risks that a worker may be exposed to in the course of their work. The Management of Health and Safety at Work Regulations 1999 SI No. 3242 requires employers to undertake a suitable and sufficient risk assessment of the workplace, which does not mean just the building and all that is in it; it also means assessing the risks of each person's job or role within the organisation, no matter where they are working. This can then provide a basis from which a health assessment can be made. When it is known what is required of the job, where it is to take place and what hazards the individual will be exposed to, then criteria can be decided against which an assessment of fitness to undertake that role can be made.

If we go back to the tribal initiation, the experienced warriors knew what hazards the young men would be exposed to, the initiation process was testing to ensure that, before a young warrior joined their ranks, he had demonstrated that he was capable of undertaking the work: he was 'fit for the job'. Today there are still big differences in the health risks, depending on the demand of the task or job, but the general laws protecting health and safety apply in all cases. There is also some more specific legislation applied in specialist areas, such as chemicals and substances, which come under specific legislation such

as the Control of Substances Hazardous to Health Regulations 2002 SI No. 2677 (as amended), the Control of Asbestos at Work Regulations 2002 SI No. 2675 and the Control of Noise at Work Regulations 2005 SI No. 1643, in force since April 2006. These will be dealt with in more detail in Chapter 3.

Risk assessment is the responsibility of the employer to undertake and the responsibility can be, and usually is, devolved to the managers or specialists of particular areas of work. Today, as part of quality control systems, such as clinical governance in health care, risk managers are employed to consider all aspects of risk, and that can include environmental and financial as well as health and safety factors. However, they, too, devolve risk assessment to local levels of management which should know and understand the hazards and risks of their area of work. The Health and Safety Executive (HSE) defines 'hazard' as anything that can cause harm (e.g. chemicals, electricity, working at heights, etc.); and 'risk' as the chance, high or low, that somebody will be harmed by the hazard⁶. This concept of risk assessment has alarmed some employers and they have in some instances tried to pass the responsibility on to occupational health, or have avoided getting to grips with their obligations under the legislation. Today, the risk assessment records are one of the first things an HSE inspector asks to see when he visits a company, and particularly following an accident or incident reportable under the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations (RIDDOR) 1995 SI No. 3163.

The simplicity or complexity of risk assessments will depend on the work of the company. A large chemical organisation will have complex, multi-layered risk assessments drawn up by highly skilled chemical safety engineers, whilst in other organisations departmental managers, who are confident in their knowledge about their departments activities, are able to undertake risk assessments and will call on occupational health, health and safety or other professional experts, such as ergonomists, appropriately as the need arises. The basis required for any risk assessment under the Health & Safety at Work Act 1974 and the various pieces of legislation, regulations, codes of practice, etc. is the 'Five Steps to Risk Assessment' (see Fig. 1.2).

Step 1. Look for the hazards

This step requires the risk assessor to have an in-depth knowledge of the workplace and the type of work to be undertaken. Not all workers are on one site, many are peripatetic or work away from central point, such as delivery drivers, maintenance engineers, postmen, etc. Spending time walking around the workplace, talking with employees and asking questions is one way to identify hazards, but for those not based on site the answer may be to spend a day out with these people, and ask them and their union representatives what they think are significant hazards. HSE suggest that the trivia should be ignored and significant hazards concentrated on; by significant they mean hazards that may result in serious harm to the individual or which may affect several people. One good key to identifying hazards is to look under

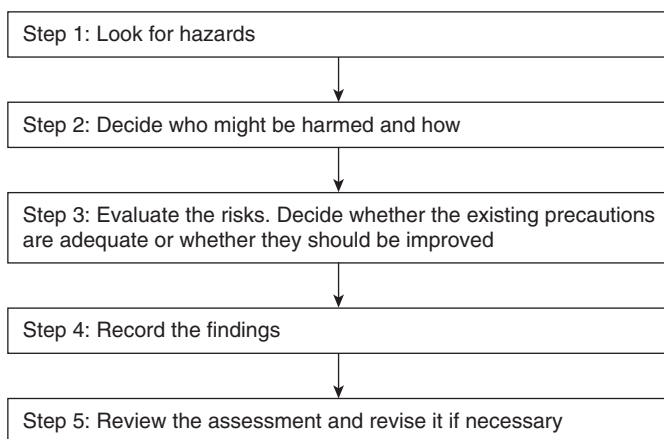


Fig. 1.2 Five Steps to Risk Assessment (HSE 1998)⁶.

the headings in the work environment and view these along with the work characteristics in Fig. 1.1.

Step 2. Decide who might be harmed and how

The important aspects of this step are to consider the workforce generally and particular people specifically, such as young workers, expectant mothers, new mothers, other vulnerable people, or even the general public and the particular environment, including such things as building scaffolding or public events. This may lead you to consider that there are some jobs that cannot be undertaken by certain groups, but care must be taken here and if necessary advice sought, as legislation such as the Disability Discrimination Act 1995 may come into play. It is worth remembering that risk assessments are statutorily required to be carried out for pregnant workers and new mothers.

Step 3. Evaluate the risks

Some hazards have to be controlled in certain ways according to specific legislation or industry standards, but the majority have to be decided at a local workplace level. It is not always possible to get rid of the hazard but it must always be identified, made known to workers and its risk mitigated to the lowest risk level practicably possible. Here we quote the example of the sea. It is a natural phenomenon and it does not become a danger until people interact with it, whether for work or pleasure. When consideration is given to all the things that go on, by, in, over and under the sea, and the risk factors involved, these present quite a significant hazard. We cannot get rid of it, nor would we want to, as it is extremely important to life and man's existence. However, we do need to control our interaction with it in a number of ways, depending on the activity. Some, of course, are controlled by health and safety rules, such as fishing, sailing, leisure sports, etc.

Once the risks are evaluated as high, medium or low, they should be reduced to as low as practicably possible using appropriate measures, including those required by statute. Good practice measures in addition will ensure that new employees are suitably trained and able to do the job and that they have the right health protection at work from the outset. In case study 1.2 a university demonstrates how they have used the risk assessment process to identify the health assessment and surveillance needs of their employees.

Occupational health case study 1.2

A university employs some 7500 staff and has a similar number of PhD students and researchers, many of whom are involved in specialist research, which involves exposure to known respiratory sensitisers and asthmagens.

The department that is to employ the student or researcher is required to complete an individual risk assessment in relation to the specific research they will be undertaking. On receipt of this assessment by the occupational health service, each individual is required to complete a questionnaire outlining any relevant past medical history and their experience of work in this field. A baseline pre-placement health screen, including Spirometry, is then performed on those individuals who are identified as working with identified respiratory sensitisers or asthmagens. On completion of this baseline screening, a further three appointments are made for continued screening throughout the succeeding twelve-month period in line with Health & Safety Executive guidelines.

To support and strengthen the screening programme a leaflet: 'Prevention of Sensitisation in Research', has been devised by the occupational health department and is given to every new employee who will be working with the sensitisers or asthmagens. The leaflet provides information on the need for prevention, control and health surveillance of those individuals working with these sensitisers and asthmagens.

Step 4. Record your findings

This will be dealt with in more depth in Chapter 2 but suffice it to say at this stage that keeping a written record for future reference and for legal purposes is essential. Health surveillance and COSHH risk assessment records should be kept for at least 40 years.

Step 5. Review

Periodic reassessment is important and will help with ensuring that health and safety is kept at the forefront of managers' and workers' minds and that everything is working effectively and at current best practice standards. Changes to the workplace, equipment or new procedures will all require the risk assessment to be reviewed.

For examples of how to undertake simple risk assessments see Fig. 1.3 and Table 1.1 and Fig. 1.4 and Table 1.2.

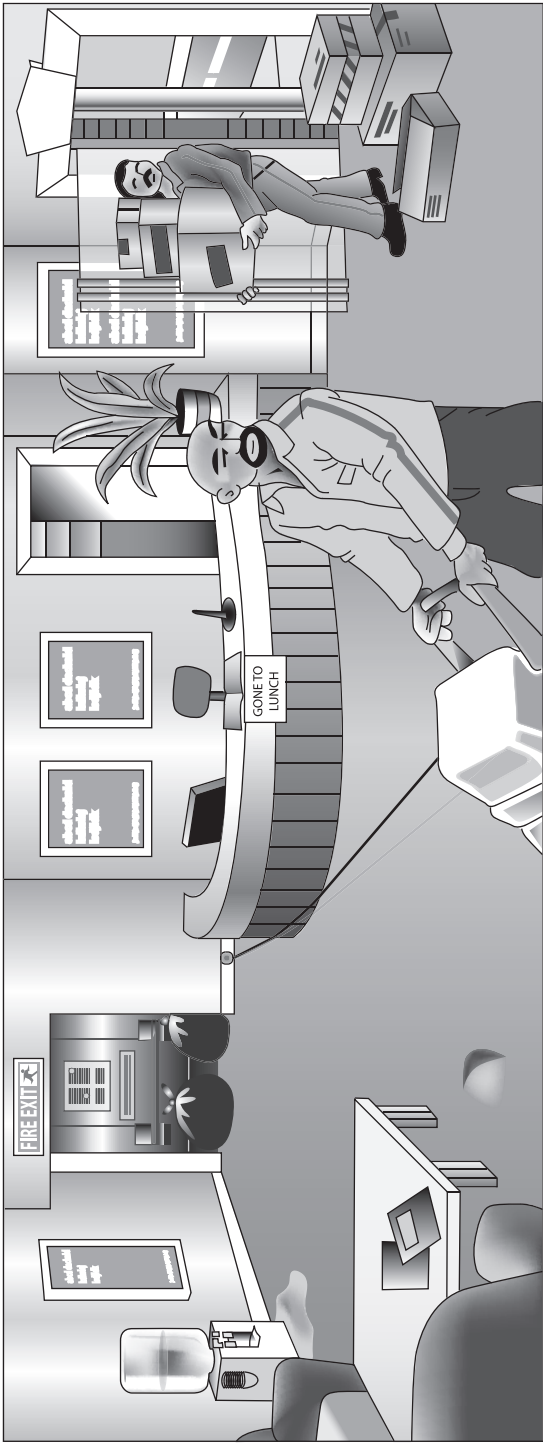


Fig. 1.3 Workplace entrance.

Table 1.1 There are six hazards in this picture. See if you can identify them and consider how and who they might harm. Then consider how you could remove the hazard or reduce the risk of it causing harm. Then check with the table below to see if your risk assessment concurs. This fulfils the first three steps of the risk assessment. Record findings in a suitable manner such as the chart below and then plan review dates.

| Step 1 Identify the hazard | Step 2 Decide who might be harmed and how | Step 3 Evaluate risks and put in place measures to reduce the risk |
|--|--|--|
| Company entrance unmanned | This is a security risk and allows anyone to enter the building. No supervision of contractors or deliveries. | Level of risk will depend on where the company is and what it does. Reducing the risk could be quite simple by having a key pad on the door for workers and a bell for visitors. |
| Manual handling of boxes and man unable to see where he is going | Risk of slips, trips and falls to the individual or to others who he may encounter. Risk of musculoskeletal disorders such as low back pain. | Provide a sack barrow to minimise manual handling. Provide information and training for safe handling. |
| Storage blocking both entrances/ fire exits | A danger to all people who are in the building in the event of a fire, or power cut. | Provide safe storage areas, information and training about keeping entrances and exits clear at all times. |
| Electrical wires across the floor | A hazard to people walking across the area. | Cleaning areas should be cordoned off and signposted whilst cleaning is in progress; operatives need information and training on correct procedures. |
| Torn carpet | Worn and uneven floors are a trip hazard, especially in a public area | Repair carpet with suitable tape. Regular inspections of public areas. Identified personnel responsible for the area. |
| Leaking water cooler | At risk of both an electrical accident or slip, trip or fall. | Sign of who to report faults to. Regular maintenance contract. Temporary hazard sign until repaired. |

Methods of pre-employment health assessment

Once the risk assessment has been carried out for the relevant workplace and work to be undertaken within the workplace, it is then possible for the occupational health service together with other stake holders such as managers, human resources, unions, etc. to devise and approve a suitable method of pre-employment health assessment. This should be clearly laid out in a suitable occupational health policy. Rantanen⁷ states that ‘mechanistic health examinations or screening without clearly defined occupational health objectives are not ethically justified’.

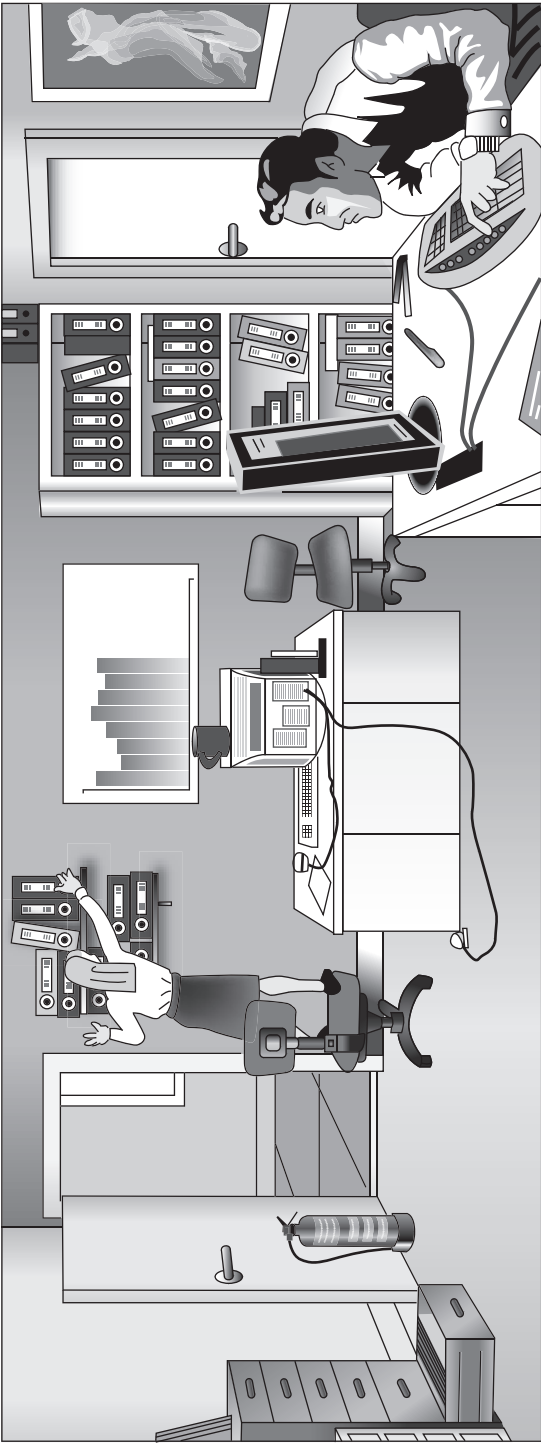


Fig. 1.4 Office environment.

Table 1.2 There are seven hazards in this picture. See if you can identify them and consider how and who they might harm. Then consider how you could remove the hazard or reduce the risk of it causing harm. Then check with the table below to see if your risk assessment concurs. This fulfils the first three steps of the risk assessment. Record findings in a suitable manner such as the chart below and then plan review dates.

| Step 1 Identify the hazard | Step 2 Decide who might be harmed and how | Step 3 Evaluate risks and put in place measures to reduce the risk |
|--|---|--|
| Poor posture at computer | Musculoskeletal disorders such as work-related upper limb disorders and back ache. | This needs addressing to prevent ill health and sickness absence. Provide information training for use of display screen equipment (DSE) and undertake a DSE workstation risk assessment. |
| Door propped open with fire extinguisher | This is a trip hazard; anyone coming into the office could fall over it. If the door is a fire door, then it should be kept shut. | Check the status of the door – whether it needs to be shut for fire prevention purposes; if not then provide a wooden door wedge. If it is a fire door and the office is too warm check heating and ventilation with maintenance department. Provide a fan to circulate air. |
| Filing cabinet door open | Trip hazard to all who use the office. | Information and training to shut filing cabinet doors after use. Always make sure filing cabinet draws are well balanced, with heaviest things at the bottom. |
| Using a chair (especially one on castors) to reach heights | High risk of falling and injury. | Provide office kick stool for reaching heights. Provide suitable storage at a lower level and easily reachable. |
| Mug on top of computer | Liquids and electricity do not mix. | Provide information and training on handling electrical equipment. |
| Electrical wires across the floor | A hazard to people walking around the office. | Provide suitable covers for trailing leads from desks and other electrical equipment. |
| Broken chair | Some one may sit on this and receive an injury or musculoskeletal problems. | Provide a safe system for labelling, removing and reporting broken equipment. |

Except where there are other legal implications, such as working with ionising radiation, diving, specific substances etc. (see Chapter 3) the usual assessments are made initially by paper or remote screening using a questionnaire or as suggested earlier in the chapter in the 'Example page in a job application employment'. This acts as a filter for determining if a follow-up

assessment by an occupational health nurse or doctor is required, depending on what the applicant has declared on the form. If a lengthier health assessment by questionnaire is required and indicated by the risk assessment then the design is important to consider.

Questionnaire design

Designing suitable health declaration questionnaires can be a problem and there are certain factors that need to be considered. It is important to remember that the Data Protection Act requires that questionnaires should only collect as much information as is necessary to fulfil the aims of the inquiry. Information should be 'adequate, relevant and not excessive in relation to the purpose, or purposes and used only for the declared purpose'⁸. Medical jargon should be avoided at all costs; in other words it should be comprehensible and 'user friendly'. After extensive research Whitaker and Aw⁵ produced a suitable pre-employment health declaration form for health care workers, but more recently research undertaken in Scotland for the NHS Scotland PABS (Peer Audit Benchmarking Standards Group) Pre-employment Health Assessment Group has produced an updated suggested pre-employment and pre-placement process, including proforma etc. for NHS staff⁹. Although is it designed specifically for NHS workers, it does provide a good basis from which to adapt a suitable process and questionnaire for other employments.

Handling the questionnaire

There are many methods of handling the questionnaire in practice and much is said about the ethical and legal issues. First, at what stage will the questionnaire be completed? Should this be before interview, at interview or at the time of the job offer? The legal issue is that once a job offer has been made a contract potentially exists, unless perhaps it is specified that it is subject to health clearance and the applicant is advised not to resign from their present employment before the clearance is given. Prospective employees should be informed as to the company's procedures, be told who will handle and see the completed questionnaire. The Faculty of Occupational Medicine⁸ states that personnel who are not medically qualified are not able to interpret medical data, but it is apparent that certain large organisations do use this system as an initial filter and those health declaration questionnaires may not be confidential to occupational health.

The occupational health professions would recommend that questionnaires are returned to the occupational health department under separate cover, or today in some instances in the form of secure emails, in order that the contents remain confidential, with the belief that prospective employees will trust the confidential nature of the medical and nursing professions and therefore complete the form with openness and trust.

In an occupational health audit¹⁰ undertaken for the two years April 2003 to April 2005, where 4482 pre-employment forms were scrutinised, no one was refused employment for health reasons. According to this audit the estimated

costs of scrutinising pre-employment health declaration forms amounted to 15 minutes per form and almost the cost of one full-time occupational health adviser at a salary of circa £30,000 pa. This sum was reached by adding up the time it takes to scrutinise each form, clarify statements and get correct information, then complete the necessary records and documentation and return the documentation and answer any queries.

A survey of pre-employment questionnaires was undertaken in 2006 by Ballard¹¹. This highlighted the time consuming aspects of this function, concurring with Hargreaves findings above. Both pieces of work concluded that not everyone agrees that the effectiveness of pre-employment health assessment justifies the time and resources invested in it, besides, according to the Chartered Institute of Personnel and Development survey¹², 25% of organisations had refused employment to people who had lied on their applications. Kloss¹³ says that there is no duty on a prospective employee to declare a health condition; however, if he/she makes a deliberate lie then they may be acting unlawfully.

Fit for work?

According to company occupational health policy and, based on the risk assessment for the particular job, the occupational health practitioner makes a professional judgement on the fitness of the applicant for the post. Research has shown that the majority of people prove to be fit for employment⁵ and so management can be informed accordingly of this clearance. For those not found suitable at this stage it may be necessary for the applicant to attend for a health assessment interview by an occupational health nurse or doctor: 'A health assessment is a one-to-one interaction between a client (the employee or prospective employee) and an occupational health professional, usually a doctor or a nurse, for the purposes of assessing the physical and/or mental health status of a client'¹⁴.

Local policy and professional knowledge and experience will determine who undertakes the health assessment. Pre-employment health assessments should only be undertaken when justified by virtue of:

- ✓ The risk assessment
- ✓ Specific standards of mental or physical health
- ✓ Legal requirements
- ✓ The health of the applicant that may impact on the health and safety of others

The occupational health policy should give clear criteria for the nurse as to when and how to refer an applicant to the doctor. If it is the occupational health nurse who carries out the health interview then the health assessment should consist of only those factors identified on the questionnaire that are relevant to the post. Research undertaken in 1994 into what occupational health nurses did at pre-employment health assessments indicated that 85% of nurses undertook height, weight, urinalysis and vision screening irrespective of the justification or relevance for the processes¹⁴. The Fit for Work: Framework for Assessment³ does not go into the 'battery of assessment tools' and there does

not appear to be any more recent published research that does deal with this issue. Suffice it to say that assessment is made on each individual applicant according to the advice derived from the framework assessment. According to Schober¹⁵, assessment of the health needs of the individual is the foundation for all decision-making and problem-solving activities of care. Her work also provides a helpful list of what effective assessment depends on.

Disability discrimination

Care must be taken at this stage as several pieces of legislation are particularly relevant here, not least the Disability Discrimination Act 1995. The Code of Practice as mentioned previously gives clear guidance on discrimination in the recruitment of employees, with case studies and examples that illustrate good practice.

Particularly relevant to occupational health are the questions an employer may ask about the disability. For example, in order to give sound professional advice to the employer on reasonable adjustments and the safety of employing a person with a disability in a particular post, it is important for the occupational health practitioner to know and understand how the disability affects the client in both the long and short term. It may be that this cannot be ascertained from a questionnaire and the client will need to be called for a health assessment. However, this assessment may only be relevant and fair in relation to how the disability will impact on the health and safety of the client and/or others in the same workplace. More details on undertaking a disability assessment will be found in Dr Peter Ellis' article¹⁶ where he says that there are five steps to disability analysis:

- ✓ Functional history
- ✓ Observations
- ✓ Focused examination
- ✓ Logical reasoning of the available evidence
- ✓ Justification of opinions

Obtaining a history is an important aspect of health assessment, but if the questions being asked are not relevant to the job or to future health status then they should not be asked¹⁷. Ellis says that in disability analysis history taking focuses on the day-to-day living rather than on detailed clinical history. On the other hand asking the client whether 'any changes or adjustments to the job or workplace will be helpful or necessary' is a useful and positive enquiry.

It may be that the applicant is found to be fit for the post but that certain modifications or adjustments are required, for example, as in the case of an applicant with a visual impairment or a potentially progressive illness, such as multiple sclerosis (MS). In the case of visual impairment certain adjustment may be needed to, say, display screen equipment when the advice of a relevant outside body, such as the Royal National Institute for the Blind, or the disability employment adviser (DEA) through Access to Work, could be sought. Alternatively, it may be necessary to obtain more information on the applicant's existing medical condition and this will require the applicant's permission to contact their doctor,

preferably their specialist hospital consultant for further information. Other legislation would be relevant here, too, such as the Data Protection Act 1998, which largely superseded the Access to Health Records Act 1990 and the Access to Medical Reports Act 1988. Much of this will be covered in the next chapter on records and reports. With certain conditions, such as MS, future predications are difficult to make and the client may only ever have one episode of visual disturbance¹⁸, but if there are future episodes help can be sought regarding any necessary workplace adjustments from the disability employment advisor.

It should be noted that the person is not necessarily unfit for work, but has been found to be recommended as unfit, or unsuitable from a health and safety perspective, for that particular post. There is no legal requirement for this decision to be made by a doctor and so who carries this out will depend entirely on the local occupational health policy agreed between the company and the occupational health service. However, the occupational health nurse or doctor must be aware that he/she has to be able to justify the action and that they can demonstrate that it is an evidence-based opinion. It would be prudent for the nurse to obtain further medical advice, with the client's permission, from the treating specialist or GP. The occupational health professionals and other medical advisers make their health-related recommendations to management, which in turn enable them to make the decision relating to the employment issues. What must be remembered is that the work of Waddell and Burton¹⁹ concluded that 'Work is good for your health and wellbeing' therefore every effort should be made to support prospective employees into work.

Summary

The employment of people is a complex issue both from a legal and a health perspective. Seeking advice and following procedures will result in saving time and money for all concerned. The process needs to start early on and this chapter has shown the logical steps necessary throughout the recruitment process.

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