

10 STEPS TO MAKE RECRUITMENT SAFE

Mini Guide



Certified



Corporation

Introduction

Many employers struggle to implement effective recruitment and induction processes within their organisations.

As businesses venture into the new normal which may include a hybrid of office and home working, employers should take time to review their recruitment policies. The recruitment stage is the beginning of the relationship between employers and their staff and investing in the process will provide the long-term benefits. In line with the government's easing of lockdown restrictions, the new normal will also be affected by the end of Covid-19 adjusted right to work checks on 31 August 2021. From 1 September 2021, employers will be expected to revert to face-to-face right to work checks or use the Home Office's online checking service, where possible.

This guide sets out the top ten tips for navigating the new landscape and getting recruitment right from beginning to end.



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Before the interview

#1 Ensure all staff involved in the recruitment process receive the correct training

All staff members involved in the selection process should receive equal opportunities training (and should continue to receive such training regularly throughout their employment). Those involved in the recruitment process should also be made aware of the terms of any relevant recruitment policies that would need to be factored into the induction process. This will help them:

- Recognise when they are making stereotypical assumptions about people.
- Apply any set scoring methods objectively.
- Prepare questions based on the person specification and job description and the information provided in a candidate's application form or CV.
- Avoid asking questions that are not relevant to the requirements of the job.

If there is any deviation from the terms of the policy, document the reasons why.

By ensuring that staff members are regularly trained and aware of relevant policies, you will be better placed to show that they took reasonably practical steps to prevent unlawful discrimination or harassment.

#2 Provide a detailed job description and person specification

Use plain, simple language when explaining the role. There should be sufficient information to enable an applicant to make an informed decision about whether to apply. Where there are different ways of performing a task, rather than specifying how the task should be performed, the job description should state what outcome needs to be achieved.

It's important to ensure that all requirements can be objectively justified by reference to the role in question and do not indirectly discriminate against a group of employees. Consider whether any of the below requirements will be necessary for the job in question:

- specific qualifications
- set working hours or times
- travel
- specific age range
- dress

A person specification should describe the skills, knowledge, abilities, qualifications, experience, and qualities that are considered necessary or desirable in a candidate, to perform all the duties in the job description satisfactorily. This can then be used to assess each candidate.

It is good practice for job descriptions and person specifications to be reviewed at regular intervals (and at least before a recruitment exercise) to ensure that they are accurate and up to date.

The deadline for the submission of applications should also be clearly outlined to avoid confusion and it's recommended that application forms or job advertisements do not require candidates to state their nationality and/or if they have the right to work in the UK.

Recruitment in a virtual world

When crafting a job advertisement, keep in mind its main purpose is to offer job seekers a complete overview of what the job entails. For a remote position, above all else, you need to convey whether the job is fully or semi-remote and any geographical or time zone requirements.

#3 Create a paper trail

Ensure that every stage of the recruitment process is documented by keeping accurate records. It will enable you to justify each decision and the process by which it was reached.

In the event of any complaints or litigation these documents will be disclosable, so they should be written clearly and objectively.

The Equality and Human Rights Commission's *'Employment Statutory Code of Practice'* also recommends that employers retain any monitoring information requested for equality purposes as general statistical data.

#4 Duty to make reasonable adjustments

Ensure that all job applicants are asked if they need reasonable adjustments for any part of the recruitment process. An employer's duty to make reasonable adjustments applies throughout the recruitment process from advertising the position to selection and making job offers.

One difficulty faced by employers during recruitment is knowing whether an applicant has a disability in order to determine whether reasonable adjustments need to be made to the recruitment process. Recognising this, the legislation provides that an employer who cannot reasonably be expected to know of the disability will not be required to make reasonable adjustments and will not be liable for discrimination arising from the disability.

Bearing this in mind, you must consider making reasonable adjustments for the recruitment process if the:

- job applicant asks for reasonable adjustments;
- job applicant says they have a disability; or
- you know, or would be expected to have known, of the disability.

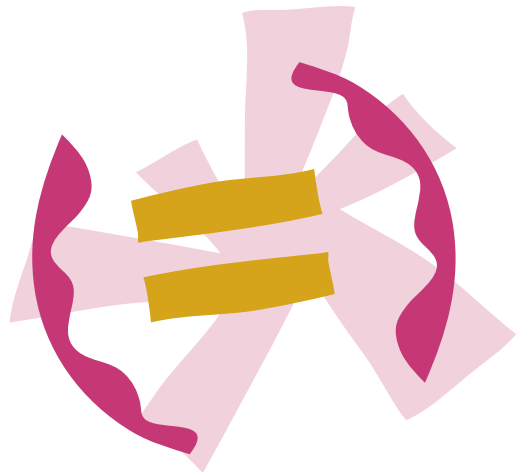
During the interview

#5 Implement a fair selection criterion

The selection process may involve several stages depending on the nature of the vacancy and the company's size and administrative resources. Such stages could involve:

- Shortlisting
- Selection tests
- Assessment centres
- Interviews

Some employers choose to appoint recruitment panels to sift through applications. Using more than one person to consider the applications reduces the risk of one person taking an unbalanced or overly subjective decision about an applicant. It also permits debate amongst the panel on borderline candidates. However, this may not be necessary for more junior roles or suitable for smaller organisations who may only be able to allocate one manager to sift applications.



The panel should agree on a selection criterion based on the job description and person specification. All candidates should be marked against the criteria and a shortlist of applicants drawn up. Whatever process you decide on, it must be fair, consistent and result in the appointment of the best person for the job. You should ensure that, as far as possible, arrangements for holding tests or interviews, or using assessment centres, do not put any candidates at a disadvantage in connection with a protected characteristic.

Shortlisted candidates should be notified of any tests they will be required to undertake as part of the interview process and asked if they will require reasonable adjustments under the Equality Act 2010 to complete the interview process and any aptitude tests.

#6 Ask the right questions

Avoid questions about a candidates' personal life unless they are directly relevant to the requirements of the job. For example, questions about childcare or living arrangements or plans to get married or to have children could easily lead to claims. Where such information is volunteered, take care not to be influenced by that information.

Also avoid asking about their UK immigration status during the initial interview, because if you later reject them and they did not have the right to work in the UK, you could face a potential discrimination claim.

Ask open questions during the interview. Ideally, all shortlisted candidates will be asked the same questions and their answers scored consistently by the interview panel.

#7 Provide appropriate feedback to unsuccessful candidates

Where possible provide prompt responses to candidates who request feedback. Failure to give feedback following a request can give rise to an implication that the reason for rejection is dubious.

Feedback can be written or oral and should be provided in a sensitive manner, with any negative comments or criticisms relating directly to the applicant's failure to meet the relevant requirements.

If challenged, all feedback should be capable of being supported objectively.

Keeping notes on why candidates are rejected is also sensible and would be important for responding to any claims arising. Make sure they are kept for no longer than necessary however, and in line with any data retention policy.



Making the offer

#8 Make a written offer

Once the successful candidate has been identified, it's good practice for the offer to be made or confirmed in writing and be accompanied by an up to date and appropriately drafted contract of employment.

Also, outline any conditions to which the offer is subject, for example, the right to live and work in the UK and receipt of satisfactory references. Remind your candidate that they shouldn't resign from their existing job before these conditions have been satisfied.

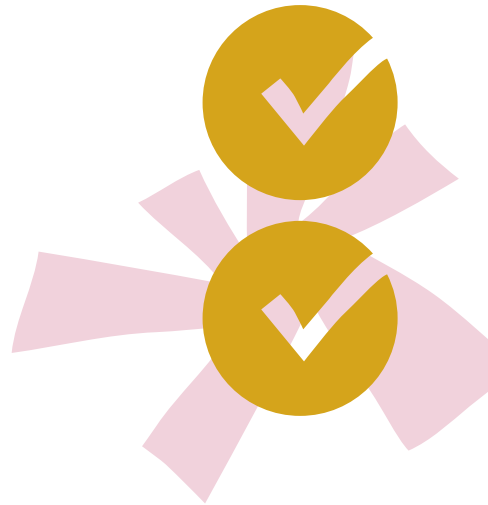
To avoid confusion with any previous discussion or negotiations which may have taken place, you might wish to state that the offer on the terms provided supersedes any previous discussions.

#9 Conduct Right to Work checks

Employers have a duty to prevent illegal working in the UK by carrying out prescribed document checks. Right to work checks should be conducted prior to employment commencing. Below are the ways how this can be done:

- **Temporary COVID-19 adjusted right to work checks** (in place up to and including 31 August 2021);
- **Online right to work checks** – This can only be used in limited cases where the applicant has Biometric Residence Permits ('BRPs'), Biometric Residence Cards ('BRCs'), status under the EUSS, status under the points-based immigration system, BNO visas and frontier worker permits. The applicant provides the employer with their share code and then the employer conducts the checks via the **employer portal**.

- **Manual right to work checks** – The employer holds the original acceptable document(s) and checks them via the physical presence of the holder (this can be via a live video link or in person).
- The Home Office has published a **right to work checklist** for employers which can act as a useful reminder on what to do.



To avoid claims for race discrimination, you shouldn't make assumptions about a person's right to work in the UK based on race, colour, or national origin. You should ask the same questions of all applicants regarding permission to work in the UK at the relevant stage of the recruitment process.

#10 Sponsorship required

If you'll be sponsoring the applicant to undertake the role, it's important that you consider at the outset of the recruitment process what evidence you need to retain in order to comply with your sponsor duties. **Sponsor guidance appendix D: keeping records for sponsorship** has further information.

This information is necessarily of a general nature and doesn't constitute legal advice. This is not a substitute for formal legal advice, given in the context of full information under an engagement with Bates Wells.



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