

### One of the most common questions we are asked is - **if, how and when should I declare an impairment or health condition to an employer?**

This may be more clear cut for some people than others. Some people with hidden impairments may have more flexibility about whether to declare or not, but the timing can be an issue for everyone. This is a question which prompts a lot of debate during self advocacy workshops. For some disabled people the main issue is whether to mention an impairment or health condition at all. For others it is more about when to bring up a requirement for a particular adjustment or need for assistance – in other words, how far to go when discussing your requirements and highlighting barriers.

Many disabled people have reported to us that they have waited until things became very difficult before telling a line manager about an issue:

*“I put all my energy into finding ways of getting the job done without declaring my impairment. My approach included volunteering for tasks which weren’t a problem and then being ‘too busy’ to take on other things which were more tricky. I took work home to spend extra time on it. I also confided my situation to one colleague who was very supportive in unofficially trading and sharing tasks. This stage was extremely stressful and became impossible to sustain.”*

The Equality Act 2010 limits the circumstances in which an employer is allowed to ask health or impairment related questions prior to a job offer being made. The exceptions are:

- Reasonable adjustments in the recruitment process.
- Proficiency tests.
- Diversity monitoring.
- Schemes to increase the number of disabled workers e.g. guaranteed interview schemes.
- A genuine occupational requirement.
- Questions relating to a requirement to vet applicants for the purposes of national security.
- An ability to carry out a function intrinsic to the job.

Further guidance on this is available on the Equality and Human Rights Commission’s website at:

[www.equalityhumanrights.com/uploaded\\_files/EqualityAct/employers\\_recruitment.doc](http://www.equalityhumanrights.com/uploaded_files/EqualityAct/employers_recruitment.doc)  
(page 24 onwards)

The bottom line is that you would very rarely be under any legal obligation to declare to a prospective or current employer that you are a disabled person or have a health

condition. However, there are a lot of things to consider about the impact that declaring or not could have on your working life:

- Being open is a strategy that many disabled people find helps them to negotiate adjustments and have a positive employment experience.
- It may be impossible for you to do your job effectively or to the best of your ability if you do not discuss your requirements for adjustments with your employer.
- You only have rights under the Equality Act at work if it is reasonable for your employer to know that you are a disabled person under its terms.
- You may be unable to prove yourself at interview if you do not ask for changes to be made.
- You may need time off during working hours to attend medical appointments.
- You may need somewhere to store or take medication, or time to deal with its side effects.
- If you are asked a direct question and you do not tell the truth, this may be considered a breach of mutual trust by the employer in the future if it came to light. This could potentially lead to disciplinary action or dismissal. If this happens during your first year of employment then you would be unable to claim for unfair dismissal and it might be hard to prove disability discrimination as your employer would not have been aware that you were likely to come under the terms of the Equality Act.
- It may affect your working relationships if you feel you cannot talk about a significant part of your life or past with colleagues that you become friends with.
- You may want to pre-empt any potential incorrect assumptions that could be made about you.
- It may be difficult to explain long impairment related gaps in your employment record if you are not open. The employer may jump to unfavourable conclusions about what these represent. Case law under the new Equality Act will be interesting here now that health related questions are largely prohibited.
- It may help to create a positive and open culture in your workplace if disabled people declare themselves. There will then be more opportunities to gain from in-work peer support such as disabled staff groups that campaign collectively for change.
- Your employer will have more of an idea of the requirements of their staff members and will be better placed to meet their equality duties.
- On the other hand, if you feel that your impairment would not affect your ability to do the job well, then you may feel that it is not worth mentioning.
- If you do declare at the recruitment stage and you feel that this was the reason you were not appointed it may be difficult to prove this.

**Application forms:**

Many application forms ask applicants if they consider themselves to be a disabled person, have a medical condition, or are on any medication. Why might they do this? Common reasons – not all of which are legitimate or legal - could be:

- They want to know whether you are likely to be covered by the Equality Act. Some will quote the act's definition of disability and ask whether you feel you fit into this. If you are covered then the employer has a duty to make reasonable adjustments for you if otherwise you would be at a substantial disadvantage. It is good practice for employers to assume you are covered without asking for evidence. They should not ask for this information prior to a job offer being made unless one of the exceptions listed on page 1 applies.
- They want to monitor how many disabled people are applying for jobs under their Equality Duties.
- Some will simply want to know whether you require any adjustments either for the interview or to do the job.
- They want to know whether you are medically fit to do the job (see page 4).
- They are trying to work out whether you are likely to take a lot of time off sick!
- There may be questions asked about disability (and often about ethnicity, gender, age, sexual orientation and religion as well) for equal opportunities monitoring purposes. These enable the employer to see whether they are reaching a diverse range of candidates. Such information should be anonymous and separated from the application form on receipt. On a related note, it is good practice for personal information such as your name to be excluded from the information provided to people shortlisting, as it may be easy for them to deduce information such as your gender, likely age and possibly ethnic origin from this.
- They may operate a scheme in which disabled people automatically get an interview if they meet the minimum requirements of the post.

**CV.** Not all employers will accept CVs. A possible advantage of a CV is that you can present yourself in your own way and you can tailor it according to the requirements of the company you are applying to by using a covering letter. Some people recommend explaining any impairment related gaps in your CV in the covering letter but it's really up to you whether to do this.

**At Interview.** Some people prefer to wait until an interview to declare and talk about any possible requirements, although this means that the employer will not have had a chance to put adjustments in place in advance for your interview if you need them.

You can use declaration as a way to demonstrate your creativity and problem solving abilities. Experiences and transferable skills you have gained as a disabled person, for example managing a personal assistant, may have enabled you to develop an array of competencies that would be very attractive to an employer. Again, you may feel that this is better left until a job offer is confirmed, now that the law has changed.

**Medical screening:**

Some jobs require that a medical questionnaire is completed. This should only be done after a conditional offer of employment has been made - employers should always decide who to appoint first. Employers should not only ask a disabled applicant to complete a medical form as this would be discriminatory. Only medically qualified people should be involved in determining whether there is a medical issue that would genuinely affect you in the job. If medical screening is done at all – and this is a highly contentious area – the emphasis should be on looking at what adjustments can be made. Medical issues should not stop you from getting the job unless they genuinely have a substantial effect on your ability to do the job which cannot be overcome by making reasonable adjustments. Screening is more common in public sector and health related jobs. For more information about collecting data on workers' (including applicants' health), see chapter 4 of the Information Commissioners Office Code of Practice on Employment:

[www.ico.gov.uk/upload/documents/library/data\\_protection/detailed\\_specialist\\_guides/employment\\_practices\\_code001.pdf](http://www.ico.gov.uk/upload/documents/library/data_protection/detailed_specialist_guides/employment_practices_code001.pdf)

**During employment:**

Some people prefer to wait until they have built up some close working relationships and 'proved their worth' to their employer before telling the employer that they are a disabled person or discussing their requirements in more depth. If you don't need any adjustments at interview or when starting the job, this can give you a chance to test the water before deciding what you want to reveal. See the 'Anything to Declare' edition of Free Wire magazine for an article on the pros and cons of when and what to disclose during employment.

A good approach from the employer's point of view would be to constantly review staff members' requirements for adjustments – including those employees who have not actually said that they consider themselves to be a disabled person. This way, people may feel less like that have to hide any issues they are having, and barriers can be dealt with more effectively as they arise. Encourage your employer to commission Disability Equality Action Training for their workforce – managers especially – as this will help develop a workplace culture where people feel confident to be open about their requirements without fear of potential discrimination.

**Confidentiality:**

If you choose to declare and you would prefer others not to know, you can ask for the information you provide to your line manager or human resources representative to remain confidential. It should only be passed on to others with your consent anyway. 'Sensitive personal data' such as a medical condition must not be divulged by the employer as this could well be a breach of the Data Protection Act. Any information you provide to medical personnel can only be passed on with your express, written consent. Information passed on in confidence should not be shared with anyone else unless you decide it would be helpful for others to know. See the Information Commissioners guidance on data protection in relation to worker's health below:  
[www.ico.gov.uk/upload/documents/library/data\\_protection/practical\\_application/coi\\_html/english/employment\\_practices\\_code/part\\_4-information\\_about\\_workers\\_health\\_2.html](http://www.ico.gov.uk/upload/documents/library/data_protection/practical_application/coi_html/english/employment_practices_code/part_4-information_about_workers_health_2.html)

**Health and Safety**

It is extremely rare that the effects of someone's impairment would present a health and safety risk which could not be overcome by making reasonable adjustments. This is a big area to go into here, but you can find some very useful guidance on this topic on the Health and Safety Executive's website at:  
[www.hse.gov.uk/disability/index.htm](http://www.hse.gov.uk/disability/index.htm)

**Ongoing Process**

Many people find that declaring is not a single event, but can often be a series of small discussions that need to be had when specific barriers are encountered:

*"I have a supportive working environment and I can negotiate any adjustments necessary. I am trying to target my energies at selected barriers I face when out at events and external training. I spend quite a lot of time calmly explaining and educating."*

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