

Using protected characteristics

When recruiting, in some circumstances you can use protected characteristics to help a disadvantaged or an underrepresented group. This can also help your organisation to be more diverse and representative. This also widens the talent pool you're recruiting from.

It's important to know what is possible and what could be against the law. Your action must not cause 'detriment' to another protected group.

Detriment means someone is treated worse than someone else. For example, someone does not get through the CV sifting stage because they have a certain protected characteristic.

Example of using a protected characteristic in recruitment

After identifying underrepresentation within your company you decide to take steps to increase diversity of sexual orientation.

You put your job advert in a national newspaper, on social media and in a magazine with a largely LGBT+ readership. This could mean that more LGBT+ people might see the advert and apply for the job.

It does not cause detriment to any group of people who are less likely to read that magazine. This is because you're also advertising in other places.

Using positive action during recruitment

Under the law, in very rare circumstances when recruiting, it might be possible to use 'positive action during recruitment'. This is when you use a protected characteristic as a reason for hiring one person over another.

Positive action during recruitment only applies when 2 candidates are otherwise of equal merit and you need a tiebreaker. It should only be used as a last resort. You should have exhausted all other non-discriminatory ways of deciding between the 2 candidates.

For example, if scoring candidates out of 10 points causes tiebreakers, you could increase it to 20. This could help prevent or reduce tiebreakers.

To use positive action during recruitment, all of the following must also apply:

- you've reached the stage of recruitment where you're deciding who gets the job
- you're deciding between 2 or more applicants who are otherwise equally able to do that?job
- the positive action is a proportionate way of overcoming or minimising the relevant disadvantage

If you use positive action as a tiebreaker, you must be able to prove it's because either:

- an applicant with the protected characteristic is disadvantaged because of it
- people with the?protected characteristic are under-represented in that job

You must not automatically make the same decision again when hiring in the future. You must make your hiring decisions based on the circumstances of each case and the merit of each applicant.

Example of positive action in recruitment

You select a woman over a man who did equally well in an application process and is equally qualified.

You do this because:

- your business has a goal of increasing participation of women in that role
- you have evidence of underrepresentation of women

Positive discrimination

'Positive discrimination' is when an action:

- gives more favourable treatment to members of a disadvantaged or under-represented protected group of people
- causes detriment to another protected group

Positive discrimination is against the law unless there is:

- a disability exception
- an occupational requirement

Example of positive discrimination

Alex is aware that young people are underrepresented in their business. Alex interviews 2 people for a role and hires the younger applicant to address that underrepresentation. The other applicant was assessed as more suitable for the role.

This could be discrimination because the decision was based on the person's age. This disadvantages anyone who is older applying for the job.

If there's a disability discrimination exception

It is not possible for a non-disabled person to claim disability discrimination under the law.

This means you can treat a disabled person more favourably compared to a non-disabled person.

You can specifically advertise for and recruit a disabled person without the risk of disability discrimination.

This can be a useful approach to help increase representation of disabled people in your workforce.

Comparing with other disabled people

The law only applies when comparing a disabled person with a non-disabled person, not specific disabilities.

This means if you specify a disability, there could be a risk of disability discrimination.

If you need to hire a person with a specific disability, it is important that one of the following applies:

- there is an occupational requirement
- you are using positive action during recruitment where candidates are otherwise of equal merit

[Find out more about disability discrimination](#)

Example of when the disability discrimination exception would apply

An organisation is advertising for a new role and decides to say that only disabled people can apply.

Someone who applies for the role is rejected because they're not disabled. That person could not challenge the organisation's decision on the grounds of disability discrimination. This is because being non-disabled is not protected under the law.

Example of when the disability discrimination exception would not apply

An organisation says in a job advert that only people with mobility-related disabilities can apply.

Someone with a hearing disability applies for the role. They're rejected because they do not have a disability connected to their mobility.

In this case the applicant might be able to make a claim for disability discrimination. This is because they were rejected based on their particular disability, not disabilities in general.

However, if experience of mobility issues is essential to the role, there could be an occupational requirement that justifies the decision.

If there's an occupational requirement

In some cases an employer can say that an applicant must have, or must not have, a certain protected characteristic. This is known as an 'occupational requirement'.

The occupational requirement can only be for a specific job, not for all jobs with an employer.

For it to be an occupational requirement, both of the following must apply:

- the protected characteristic is essential for and relates to the main tasks of the job
- there is 'objective justification'

Under the law, there can be objective justification if the employer can prove both of the following:

- there's a 'legitimate aim' – for example, a genuine business need or a health and safety need
- the discrimination is 'proportionate, appropriate and necessary' – this means the legitimate aim is more important than any discriminatory effect

Example 1 – occupational requirement

A religious charity is recruiting a missionary. They advertise for someone who follows their religion. Religion or belief is a protected characteristic. However, this decision could be justified if the worker needs to demonstrate their religion as part of the job.

Example 2 – occupational requirement

A TV company advertises for an actor to play a specific role. The advert says the actor must be a black man. Race and sex are protected characteristics. However, this decision could be justified if there's a need for realism and authenticity in the TV programme.

Example 3 – occupational requirement

A support centre advertises for a counsellor to work with women who have experienced sexual violence. The advert says applicants must be women and must not be transgender.

Sex and gender reassignment are protected characteristics. However, this decision could be justified if the employer needs to prevent more distress to the women they support.

Recruiting for the same job in the future

If you recruit for the same job in the future, you must not assume the occupational requirement will be justified again. You must check the requirement is still within the law.

Contact the Acas helpline

If you have any questions about using protected characteristics in recruitment, [contact the Acas helpline](#).