

Building eQuality in the workplace

Pre-Employment Medical Testing



What the law says

It is against the law to discriminate against a job applicant on the basis of a disability or impairment by treating them unfairly. In Victoria, it is against the law to refuse someone a job on the basis of a medical condition that does not affect the person's ability to perform the role.

An employer can use pre-employment medical tests if they directly relate to the genuine requirements of a job.

An employer may be legally responsible for discriminatory medical tests or the misuse of any information obtained.

Employers are also liable (legally responsible) for the behavior of their staff. This means that complaints can be made against the employer, as owner of the organisation, for the discriminatory conduct of employees.

Disability and impairment

Disability or impairment includes:

- total or partial loss of bodily function
- total or partial loss of a part of the body
- the presence of organisms in the body that may cause disease
- malformation or disfigurement of a part of the body
- malfunction of a part of the body including
- a mental or psychological disease or disorder
- a condition or disorder that affects learning ability.

Making adjustments

Employers are obliged to make reasonable adjustments for job applicants with a disability or impairment. This may involve providing services or facilities to help them perform the job. An employer does not have to provide such help if it is unreasonable or would cause "unjustifiable hardship" (i.e. costs and/or detriment to other staff or clients) to the business and effective organisation of work.

Health and safety

An employer may refuse a job to a person with a disability in order to protect the health, safety or property of any person including the job applicant. An employer must consider if there are any alternatives to this action.

Case study

Kim, who has high blood pressure, applies for a cleaner/laborer position with the same employer on separate occasions but does not pass the medical test. The employer's doctor does not match Kim's abilities to the level of fitness actually required for the job. The doctor is not aware of the specific duties involved and assumes Kim's fitness is insufficient for him to do the job. This is discriminatory and Kim may lodge a complaint with the Victorian Equal Opportunity & Human Rights Commission.



Tips for avoiding discrimination in pre-employment medical tests

Only use pre-employment medical tests that:

- ✓ relate specifically to the genuine and reasonable requirements of the job. For example physical tests should relate strictly to the person's ability to carry out the work such as lifting a certain weight or sitting stationary for prolonged periods. Psychological and aptitude testing should relate specifically to the genuine and reasonable requirements of the job
- ✓ accurately identify the specific physical and mental skills required in the job
- ✓ are conducted by a medical practitioner who is experienced in conducting non-discriminatory, pre-employment medical tests and who understands the genuine job requirements
- ✓ assess all applicants for a particular job. Factors such as age or gender should not determine who is tested
- ✓ assess current health and not predict future deterioration unless it is reasonable to do so
- ✓ ensure job applicants are tested using any service or facility they would need to perform the job. For example, an applicant with a hearing aid should use the hearing aid during a medical assessment
- ✓ avoid asking applicants about past or current injuries, number of sick days taken in the previous year or previous workers' compensation claims are confidential.

Case study

Nelson is interviewed for a prison officer job and does well in the written examination. He attends a medical examination and is found to be fit enough to perform the job's requirements. However, he is refused employment because he recently recovered from Hodgkin's disease. The employer has a policy of not employing people who had suffered from cancer in the last two years. The employer's reliance on Nelson's past illness to exclude him from employment may be against the law.



For more information on employers' general rights and obligations, case studies and tips on avoiding discrimination in the workplace visit our website www.humanrightscommission.vic.gov.au

More Information

The Victorian Equal Opportunity & Human Rights Commission offers training and education consultancy services in equal opportunity policies and practices. Training can be delivered onsite throughout Victoria or at our training centre in Melbourne. Please telephone **(03) 9281 7168** for more information.

The Commission also offers a free telephone advice service.

Disclaimer This information is intended as a guide only. It is not a substitute for legal advice.



**Victorian Equal Opportunity
& Human Rights Commission**

3/380 Lonsdale Street Melbourne Victoria 3000

Advice Line: **(03) 9281 7100** · Phone: **(03) 9281 7111** · Fax: **(03) 9281 7171**

TTY: **(03) 9281 7110** · Toll Free: **1800 134 142** (country callers) · Interpreters: **(03) 9280 1995**

Email: **information@veohrc.vic.gov.au** · Website: **www.humanrightscommission.vic.gov.au**

Authorised by the Victorian Equal Opportunity & Human Rights Commission, 3/380 Lonsdale Street, Melbourne, Victoria 3000.

Printed by Printmode 125-123 Thistlethwaite Street, South Melbourne, Vic 3205. June 2008