

# 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 less favourably than someone else. 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 may be liable for discriminatory medical tests or the misuse of any information obtained.

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

### 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.

## 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 do 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.

## Making adjustments

An employer must 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 to the business.

## 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.

**For more information on employers' rights and obligations, case studies and tips on avoiding discrimination in the workplace visit our website [www.eoc.vic.gov.au](http://www.eoc.vic.gov.au)**

### CASE STUDY

*Kim, who has high blood pressure, applies for cleaner/labourer 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 unlawful discrimination and Kim may lodge a complaint with the Equal Opportunity Commission Victoria.*

### 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.*

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**[www.eoc.vic.gov.au](http://www.eoc.vic.gov.au)**

## More information

The Equal Opportunity Commission Victoria offers education, training and support in equal opportunity policies and practices. Training can be delivered on-site throughout Victoria or at our training centre in Melbourne.

Please telephone (03) 9281 7122 for more information.

The Commission also offers a free advice telephone service on (03) 9281 7100.



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*Free interpreters available on request*

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### Disclaimer

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