

Occupational health checks

October 2010

About the NHS Employment Check Standards

This document outlines the occupational health checks that NHS organisations must carry out for the appointment and ongoing employment of all individuals in the NHS. It is one of a set of six documents that make up the *NHS Employment Check Standards*.

NHS Employers has developed these standards with the Department of Health and employers in the NHS. The standards include those checks that are required by law, those that are Department of Health (DH) policy and those that are required for access to the NHS Care Record Service.

These standards replace previous NHS Employers guidance on safer recruitment and describe the employment checks that NHS organisations must carry out to meet the Department of Health's core standards, outlined within the Standards for Better Health. From April 2010, all NHS providers (whether NHS organisations or private providers) need to be registered with the Care Quality Commission (CQC), formerly the Healthcare Commission. NHS providers will be required to show evidence of compliance with the *NHS Employment Check Standards* as part of the CQC's annual regulatory framework.

Failure to comply with these standards could potentially put the safety and even the lives of patients, staff and the public at risk.

The NHS Employment Check standards are mandatory for all applicants for NHS positions (prospective employees) and staff in ongoing NHS employment. This includes permanent staff, staff on fixed-term contracts, volunteers, students, trainees, contractors, highly mobile staff and staff supplied by an agency. Trusts using agency, contractor or other external bodies to provide NHS services must ensure, through regular audit and monitoring, that their providers comply with these standards.

Avoiding discrimination

Employers must avoid unlawfully discriminating in their recruitment processes on the grounds of ethnicity, disability, age, gender, religion and belief, or sexual orientation. To avoid discrimination employers must treat all job applicants in the same way at each stage of their recruitment process.

Recording and protecting data

NHS employers must carry out all checks in compliance with the Data Protection Act 1998. Information should only be obtained where it is essential to the recruitment decision and kept in accordance with the Act. Employers must record the outcome of all pre-employment checks, using Electronic Staff Record (ESR), where available, or an alternative HR management system. These checks are also part of the information governance and assurance standards linked to the use of the NHS Care Record Service (NHS CRS). For more details visit www.connectingforhealth.nhs.uk/systemsandservices/rasmartcards

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Introduction

All NHS staff must have a pre-appointment health check, which adheres to equal opportunities legislation and good occupational health practice.

Pre-appointment health checks are carried out to:

- ensure that prospective staff are physically and psychologically capable of doing the work proposed, taking into account any current or previous illness
- identify anyone likely to be at excess risk of developing work-related diseases from hazardous agents present in the workplace
- ensure, as far as possible, that the prospective employee does not represent a risk to patients and that they will be doing work that is suitable and safe for them.

All checks must take into account the requirements of the Disability Discrimination Act 1995 (DDA) and reasonable adjustments must be made to ensure that people can work in the NHS regardless of physical impairment or learning disabilities.

Occupational health checks should be made once a job offer has been made. Employers must make it clear to prospective employees that any offer of appointment is conditional pending the successful completion of pre-employment checks, including an occupational health check.

Occupational health checks are the final pre-employment checks employers must do as part of the *NHS Employment Check Standards*. Please refer to the other documents in the standards for information on verification of identity, right to work, professional registration and qualification, employment history and references checks.

Risk assessments

Employers are legally required to carry out risk assessments to manage health and safety of staff (and others) effectively on their premises. For more information on managing risk see www.nhsemployers.org/healthyworkplaces.

Responsibilities

The occupational health service provides specialist confidential advice to the employer and the applicant.

Responsibility for taking up references, including information about absence behaviour and for making registration checks, rests with the referring manager.

The referring manager decides whether to employ the applicant, in light of reports from the occupational health service and other relevant information. Employers may choose to employ an applicant despite concerns expressed by the occupational health service, but they will need to be able to fully justify this decision.

Amendments under the Equality Act from 1 October 2010

Section 60 of the Equality Act 2010 which comes into effect on 1 October states:

Enquiries about disability and health

(1) A person (A) to whom an application for work is made must not ask about the health of the applicant (B)

(a) before offering work to B, or

(b) where A is not in a position to offer work to B, because including B in a pool of applicants from whom A intended (when in a position to do so) to select a person to whom to offer work.

From this date, except in essential cases, employers will no longer be able to issue applicants with pre-employment health questionnaires as part of the recruitment process. In their place, employers should invite prospective employees to make a declaration of 'yes' or 'no' against two statements which will be included as part of the letter issued by HR outlining their conditional offer of appointment.

These statements are as follows:

1. I am not aware of any health conditions or disability which might impair my ability to undertake effectively the duties of the position which I have been offered.
2. I do have a health condition or disability which might affect my work and which might require special adjustments to my work or at my place of work.

Pending changes to legislation will not make any amendment to requirements for health care workers involved in patient care, patient contact, or body fluid sample handling. This group will need to be treated slightly differently by having minimal screening together with the obligatory communicable diseases questions. They will, however, still need to be asked to respond to the two statements set out above.

Further details can be found on the Health, Work and Wellbeing pages of the NHS Employers website at: www.nhsemployers.org

The process

Occupational health checks should be done when a member of staff:

- takes up their first post including any training
- transfers to a new employer in the NHS
- changes jobs, where this involves a significant change of duties.

If the potential employee has responded 'yes' to the second statement outlined above, they will need to be referred directly to an occupational health advisor, or other suitably qualified person, for consideration. If there are no grounds for investigation, the process ends here.

If it is considered necessary, an interview with the prospective employee should be arranged to assess their fitness for the post and identify what reasonable adjustments, if necessary, can be put in place to ensure them to undertake the roles and responsibilities of the job being offered. An occupational health nursing adviser or a physician should carry out the interview.

The results of the occupational health check should be passed back to the recruiting manager, who should make a decision on employment based on this advice.

Keeping and transferring occupational health records

Any information obtained from the applicant or from previous employers/educational providers about medical history such as sickness absence, relevant hospital admissions and medications must be with the applicant's consent. Once the individual is appointed, this information (including immunisation history, health monitoring and referrals) should form part of their occupational health record and be stored separately in a secure place within the Occupational Health Department and should not be kept as part of their personnel record.

Disability discrimination

Under the Disability Discrimination Act, employers have a duty to make 'reasonable adjustments' for disabled job applicants or employees, when a policy, practice or a physical feature of their premises, places the disabled person at a substantial disadvantage.

Some examples of reasonable adjustments are:

- making adjustments to premises
- altering the person's working hours
- allowing absences during working hours for medical treatment
- giving additional training
- providing special equipment or modifying existing equipment
- changing instructions or reference manuals
- providing additional supervision and/or support.

Employers should consider broader issues when deciding whether it would be reasonable to make a particular adjustment, including:

- how effective the adjustment is in preventing the disadvantage
- how practical it is
- financial and other costs and the extent of any disruption
- the extent of the employer's financial or other resources
- availability to the employer of financial or other help to make the adjustment
- the size and type of organisation.

Equality Act 2010

From 1 October 2010, under the terms of the Equality Act 2010 Section 60, employers must not ask applicant's questions relating to health or disability on an application form or by issue of a separate questionnaire, unless in exceptional circumstances – refer to the Act for full list of exceptions.

Where the employer needs to ascertain whether or not the applicant needs any reasonable adjustment during the recruitment process itself. This question should be asked by separate letter and should not be included in the application form or used by the recruitment panel to make a decision as to whether the applicant should be short-listed for interview.

Refusal of employment

No applicant should be refused employment on health grounds unless:

- expert occupational medical advice has been sought
- the applicant has had the opportunity to discuss issues raised with an occupational health professional
- the employing manager has given full consideration to all of the facts.

Further information

This document uses information from NHS Employers' guidance '*Health, safety and welfare at work*' (formerly known as the *Healthy Workplaces Handbook*). Copies of this guidance and further information relating to the changes in legislation from 1 October can be found on the Health Work and Wellbeing section of the NHS Employers website at: www.nhsemployers.org. Every effort is made to ensure that the requirements within these standards are updated in line with new legislation and DH policy as it comes into force. Where employers choose to download hard copies of the standards, it is essential that they regularly refer to the NHS Employers website to ensure that they are fully compliant with any updated legal and mandated requirements. Alerts to any changes to these standards are published in the NHS Workforce Bulletin, which you can download or subscribe to at: www.nhsemployers.org/workforcebulletin.

Visit www.nhsemployers.org/employmentchecks

Email employmentchecks@nhsemployers.org

NHS Employers

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NHS Employers represents trusts in England on workforce issues and helps employers to ensure the NHS is a place where people want to work. The NHS workforce is at the heart of quality patient care and we believe that employers must drive the workforce agenda. We work with employers to reflect their views and act on their behalf in four priority areas:

- pay and negotiations
- healthy and productive workplaces
- recruitment and planning the workforce
- employment policy and practice.

NHS Employers is part of the NHS Confederation.

Contact us

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