



# INTRUSIVE HEALTH QUESTIONNAIRES

A briefing

**Bectu has seen Health Questionnaires from employers and their insurers that appear to be unduly intrusive.**

**The union would prefer to sit down with employers collectively and agree questions that can legitimately be asked, along with a process that governs when the questions are asked and how the information gathered is stored.**

Examples of Health Questionnaires have been sent to Bectu members who are expecting to be engaged on TV and film productions. Among many detailed enquiries about health, there are embarrassing questions like...

*Have you, to the best of your knowledge and belief, ever had or have reasons to know you had .....*

- *sugar, albumin, blood, or pus in urine, kidney stones or any other disorder of the bladder, kidneys, genito-urinary system or any other **sexually-transmitted diseases**?*
- *in the past five years, **cold sores on lips or face**?*
- *in the past year, any **significant change of weight**?*
- *been treated for or had any indication of **excessive use of alcohol or drugs**?*

In addition, they have asked women:

- Are you now **pregnant**?
- Have you ever had any **disease of the uterus, cervix or ovaries** or have you had **pelvic inflammatory disease**?
- Have you been unable to work as a result of **severe pre-menstrual syndrome or problem periods**?

Men have been asked questions including

- Have you ever had any **infection or enlargement of the prostate gland**?

In Bectu's view, these questionnaires are very intrusive and excessive, even for the purposes of an insurer. Members are particularly concerned that any refusal to complete such a questionnaire could put them at risk of losing work. When asked to complete them, members should ask whom the questionnaire benefits or protects.

We would advise members that, under section 60 of the Equality Act, **any pre-employment health questionnaire is unlawful**, except in very limited circumstances, for example if needed to determine reasonable adjustments for the selection process.

Once someone is selected for a job and notified of a provisional offer, the employer can ask for health information. If a job offer is withdrawn following the results of health questions, **the worker may be able to argue that the decision was disability discrimination**, and, there would be quite a strong argument to say a tribunal should draw an adverse inference of discrimination having occurred, if an offer is withdrawn after seeing the medical information.

People who are classified as employees under the Equality Act (a similar status to a 'worker' in employment law) may have some additional protection. Because these questionnaires often differentiate between women and

men, **it could give rise to sex discrimination** – particularly a decision to rescind the offer based either on a member refusing to complete the information, or because of the answers given.<sup>1</sup>

If a member refuses to sign because of the gender specific questions and a job-offer is rescinded, Bectu would consider a challenge based on a claim of sex discrimination. This would be because having ‘women only’ gender specific questions will result in women being treated less favourably (although the union would add that many of the questions outlined above are also too intrusive for anyone!)

Following enquires by Bectu, employers have said that they will not look at the form at all and will simply pass it on to the insurers. If that is right, then it is difficult to see how we could argue that there is discrimination by the Production.

Members should also note that – even though an employer may say that they don’t see the information – the production company is still a Data Controller, and they should only be forwarding forms like this to workers if they are accompanied by a satisfactory Privacy Statement. Those employers should also have completed a Data Protection Impact Statement (DPIA). Those statements should set out why they want to have the information, and the legal basis, which would be contractual.

Employers should also be clear about what happens if the insurance company say they cannot cover someone because of their medical history. If the insurer has an issue with the worker concerned, would this information be shared with the production company? Also what information will be shared between the production company and the insurance company?

In terms of discrimination by the insurance company, there are exceptions in the Equality Act to claims under the goods & services provision in respect of insurance information. We would urge members to contact the union for advice if they have any reason to be concerned on this matter, though we would add that insurers can treat people differently in respect of any level of risk.

However, Bectu is concerned that any withdrawal of an offer of work, even one with a *potential* legal claim, would be difficult to pursue in practice – there would be little chance of an enforceable legal remedy.

**Bectu would prefer to sit down with employers collectively and agree questions that can legitimately be asked, along with a process that governs when the questions are asked (they should only be asked after a job-offer has been made and that job-offer should not be contingent upon the answers being ‘satisfactory’ to an employer). We would prefer to have an agreed privacy protocol that is applied across the industry.**

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<sup>1</sup> Bectu would urge any freelance members planning to raise a challenge of this kind to seek advice from the union first as the definition of ‘employee’ under the Equality Act may need to be checked first.