

Managing your OCD at work can be difficult. Some people hide their condition, whilst others declare it. Whatever you choose to do, knowing your rights and exploring your options is essential.

OCD & WORK

YOUR RIGHTS

On World Mental Health Day 2009, the Prime Minister joined the ranks of those calling for an end to the stigma of mental ill health and urged a “change in attitudes and a fresh openness to recognise mental health issues across our society,” but for people who want to re-enter the world of work after months or years of unemployment, how quickly is that change going to come?

Present government policy is to find ways to enable those with long or short term mental health problems to return to work and there are now a number of groups and individuals who can provide support for you if you want either to return to work or perhaps start work for the first time. Your local job centre should have access to a ‘Disability Employment Advisor’. If they don’t, then ask to speak to a ‘Personal Advisor’ or ‘New Deal Job Broker’. Specialist mental health schemes also provide assistance and you can find out what exists in your area by asking your local CAB, or Social Services, or Community Mental Health Team.

However, in spite of all the help on offer, many people contacting OCD Action are worried that they may be discriminated against if they declare their condition on any job application form. Below are some ideas and options for you to consider, but this area of employment law is a specialism and is constantly developing so if you are having issues or dilemmas about disclosing your OCD that aren’t answered by general guidance, then you should seek legal advice.

You can access free legal advice from the Community Legal Service Helpline and guidance can also be obtained from organisations such as the Law

Disability Service, the Equality and Human Rights Commission, ACAS and the TUC as well as such services such as the Mind Legal Helpline. It is always best to check whether the adviser handling your call is legally qualified, if it is more than just general background advice that you are seeking.

A good place to start is with guidance issued by the Trade Union Congress (TUC) who represent millions of workers in this country. The TUC provides a number of information booklets both for employers and employees and in its booklet “Representing and supporting members with mental health problems at work” endorsed by the Equalities and Human Rights Commission, it states:

“Many people with mental health problems will have conditions that fluctuate and it may be that they can go for long periods without having any particular difficulties. This means that many more people with mental health problems can obtain employment successfully, provided that employers are positive about developing an inclusive work culture that focuses on supportive solutions for individuals and improving the work environment for everyone..”

If however you are considering working and you have OCD, then there are two pieces of legislation that you should be aware of and that could influence whether or not you disclose that you have OCD to your employer.

THE EQUALITY ACT 2010

The Equality Act came into force on October 1st 2010 providing a modern, single legal framework with clear, streamlined law that will be more effective at tackling

disadvantage and discrimination.

If you have OCD, this Act may be able to protect your rights in terms of accessing treatment, employment, goods and services and housing. For example, did you know that it is now unlawful for an employer to ask a job applicant about his or her health before offering work and this includes conditional offers of work?

The Act includes a new Public Sector Equality Duty. It is proposed that the Public Sector Equality Duty will come into force in England and in Scotland from April 2011, and in Wales in Spring/Summer 2011. The Duty will cover all the protected grounds: age, disability, gender, gender reassignment, pregnancy and maternity, race, religion and belief and sexual orientation. The Disability Equality Duty in the existing legislation will be replaced by this. For more information please access: Equality and Human Rights Commission www.equalityhumanrights.com. TUC www.tuc.org.uk. Government Equalities Office website: www.equalities.gov.uk and download ‘Equality Act 2010- What do I need to know? A summary guide to your rights.’ Or access the OCD Action Advocacy Service for help 0845 3906234.

In relation to work, the Equality Act says that Employers are not allowed to discriminate against you because you are disabled. OCD can be classed as a disability (at the point of diagnosis) under the Equality Act. Decisions over disclosure are deeply personal, but bodies such as the TUC encourage members to disclose their mental health problem to the employer, as the onus is then on

the employer to make ‘reasonable adjustments’ (Representing and supporting members with mental health problems at work- Guidance for Trade Union Representatives- TUC).

WHAT THIS MEANS IS:

If your potential employer has made reasonable attempts to find out about your health condition and you have not disclosed it, you may not be able to make a claim for discrimination under the Equality Act 2010 as the employer can argue that they were not aware of your condition.

If you do disclose any mental health conditions, you have the right for such information to be kept confidential. Any information disclosed is protected both by the Equality Act and the Data Protection Act 1998.

HEALTH AND SAFETY AT WORK ACT 1974

Depending on the type of job you apply for, you may also be asked to complete a medical questionnaire **after you have been offered a job**. This questionnaire is to assess whether there is a medical reason why you cannot do the job. If your disability or health condition has an effect on your ability to do the role, then the employer must consider any adjustments that would reduce this. The Health and Safety at Work Act states that if your disability could cause implications for the health and safety of yourself or your colleagues, you must tell your employer. If safety issues relating to your disability were to result in an accident at work and you had not told your employer about it, you could be held legally responsible. Remember,

employers (in theory) cannot use any information to discriminate, only to anticipate any ‘reasonable adjustments’ that may be needed.

Lying on your medical form could at worst put you in breach of the Health and Safety at Work Act and at best put you at risk of dismissal at a later date as your employer could argue that you have provided false or inaccurate information to them.

DISCLOSING - THE PROS

■ It can be very stressful to be in a situation where you feel you have to hide an illness- this could make you feel worse.

■ By disclosing, you give your employer the opportunity to help and support you. Problems at work can then be seen as a result of your illness rather than of poor performance.

■ By disclosing, you have protection under the Equality Act. If you have not disclosed you may have problems accessing your rights under the Act.

■ In choosing to disclose, you are setting the agenda and are able to portray your OCD in the most positive way you can and counter any unproductive stereotypes that your employer could come across if he or she found out that you had the condition.

■ Your employers may be happy to ‘up’ their intake of employees with disabilities - it looks good on their books!

■ You’re likely to feel empowered and confident if you’re accepted into a job where you know that your employers are aware of your condition and are seeking to make adjustments to help you.

■ Your disability information is confidential – your rights are protected under the Data Protection Act 1998 and if you

disclose, you can remind your employer of their obligation to keep this information confidential.

DISCLOSING - THE CONS

■ Discrimination against people with any mental illness is still common even in enlightened companies. You may feel labelled by your disability.

■ Your long term career goals may be affected, if your employers think you may become ill at some point.

■ You may not see your OCD as a disability even if the law does.

■ If your employer is not familiar with OCD, he/she may be nervous of you and treat you differently.

■ Information may be shared inadvertently or otherwise with colleagues. (It is worth checking the privacy/ confidentiality policy of your intended employers). If information is spread about your condition without your consent your employers may be in breach of the Data Protection Act.

WHETHER TO DISCLOSE...

Having considered your options and looked at the pitfalls of disclosure or non disclosure and taken relevant advice, you may feel that there is no reason to disclose your condition as it is not relevant and will not interfere with your work. Perhaps you have concerns about being rejected by an employer or that assumptions will be made about your ability to do the job, or that you will not get promoted. Although negative attitudes certainly do exist, there is a strong argument for disclosing. Many employment agencies and advisors advise disclosure because it is a proactive, empowering approach that has you setting the agenda.

OCD AND WORK

It gives you the opportunity to present your disability confidently and positively. You have rights and protections if your OCD meets the disability criteria under the Equality Act. The Act has made it easier for a person to show that they are disabled and protected from disability discrimination. Under the Act, a person is disabled if they have a physical or mental impairment which has a substantial and long term adverse effect on their ability to carry out normal day-to-day activities.

Employers can only ask about any 'reasonable adjustments' that need to be made, they are not entitled to quiz you about personal details or history. Remember to keep their focus on your ability rather than your disability. Some employers are keen to employ disabled people. Look out for the 'two ticks' disability symbol on job advertisements - this means that an employer has made some commitment to employing disabled people.

The Equality Act also states that it is discrimination to treat a disabled person unfavourably because of something connected with their disability (eg a tendency to be longer completing a task because of checking associated with OCD). This type of discrimination is unlawful where the employer or other person acting for the employer knows, or could reasonably be expected to know, that the person has a disability. This type of discrimination is only justifiable if an employer can show that it is 'a proportionate means of achieving a legitimate aim'.

Additionally, a job applicant or employee could claim that a particular rule or requirement an employer has in place, disadvantages people with the same disability. The Act also includes a new provision which makes it unlawful, except in certain circumstances, for employers to ask about a candidate's health before offering them work.

PRE-EMPLOYMENT HEALTH-RELATED CHECKS

The Equality Act limits the circumstances when you can be asked health related questions before you have been offered a job. Up to this point, you can only be asked health related questions to help your prospective employer to:

- Find out whether 'reasonable adjustments' have to be made to the normal job application process (for eg, identifying special facilities to conduct interviews);
- Find out if the job applicant will be able to carry out a function that is intrinsic to the work concerned, for example heavy lifting.
- Monitor diversity in the range of people applying for work.
- Take positive action to assist a disabled person where that is allowed by other provisions.
- Find out that a job applicant has a particular disability where the job genuinely requires that they have that disability, provided that that requirement is 'a proportionate means of achieving a legitimate aim'.

Establishing whether a candidate is able to undertake selection tests or assessments, such as a fitness test to join the fire or police service, will be exempt under the new legislation.

TIPS FOR DISCLOSURE

- Be clear and as confident as you can be about explaining your condition- do it in layman's terms and don't blind them with science!
- If it helps, take in pre-prepared statement or fact sheet about the condition (OCD Action can help here).
- Try not to be emotive but factual.
- Don't go on at great length- just be precise
- Think about practice and transferable skills you have learnt as a consequence of managing your OCD and major on them.
- Make clear to your employer any adjustments that would have to be made and why; but emphasize the positive things you could bring to your job, your skills abilities and experiences.
- Do not assume that your employer will have a negative attitude towards you because of your OCD – they may not.
- Remember they should only ask you questions related to your OCD and how it will affect your work, field off other personal questions.
- If you are unsure about what you need to disclose, you can speak to a careers advisor at your local job centre.



If you would like further information about OCD please contact the
OCD Action Helpline on 0845 3906232 or visit www.ocdaction.org.uk