

Pre-employment medicals

Legal issues

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Chevron asks employees about reproduction history, including stillbirths and abortions

PM By [Caitlyn Gribbin](#)

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Oil and gas giant Chevron is under fire for asking prospective employees if they have ever had a miscarriage or an abortion.

The medical form, titled Medical History and Physical Examination, also includes questions such as whether the applicant has ever been pregnant, had a stillborn baby or had a procedure for sterilisation.

Chevron says the questions are explicitly voluntary and lawful, but the Maritime Union says the gas company is out of line.



PHOTO: A Chevron recruiting poster asking workers to apply for

Part F. Reproductive Outcomes

Men and women should answer all of these questions to the best of their knowledge.

(Applicants: Section F is optional but we would appreciate your response. Thank you.)

1. Have you or your spouse/partner ever been pregnant? No → If no, skip to 3. Yes

2. Complete the following table by listing all pregnancies starting with the most recent pregnancy. (If more than six pregnancies, include only last six.) For multiple births, list each child. Do not include current pregnancy. Please check (3) all boxes that apply.

Date of Birth/ Termination of Pregnancy Month / Year	Mother's Age At End of Pregnancy	Live Birth			Miscarriage (Confirmed by Doctor)	Stillbirth	Medical Abortion
		Normal Child	Less Than 5 pounds / 2 kilograms	Birth Defect(s)			
A _____	_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
B _____	_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
C _____	_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
D _____	_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
E _____	_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
F _____	_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

3. Have you ever tried for at least a 12 month period to conceive a child without success? No Yes

4. Has a physician ever told you or your spouse/partner that one of you had a medical condition that prevented having a baby?

No Yes → Did *you* have a condition? No Yes Did *your spouse* have a condition? No Yes

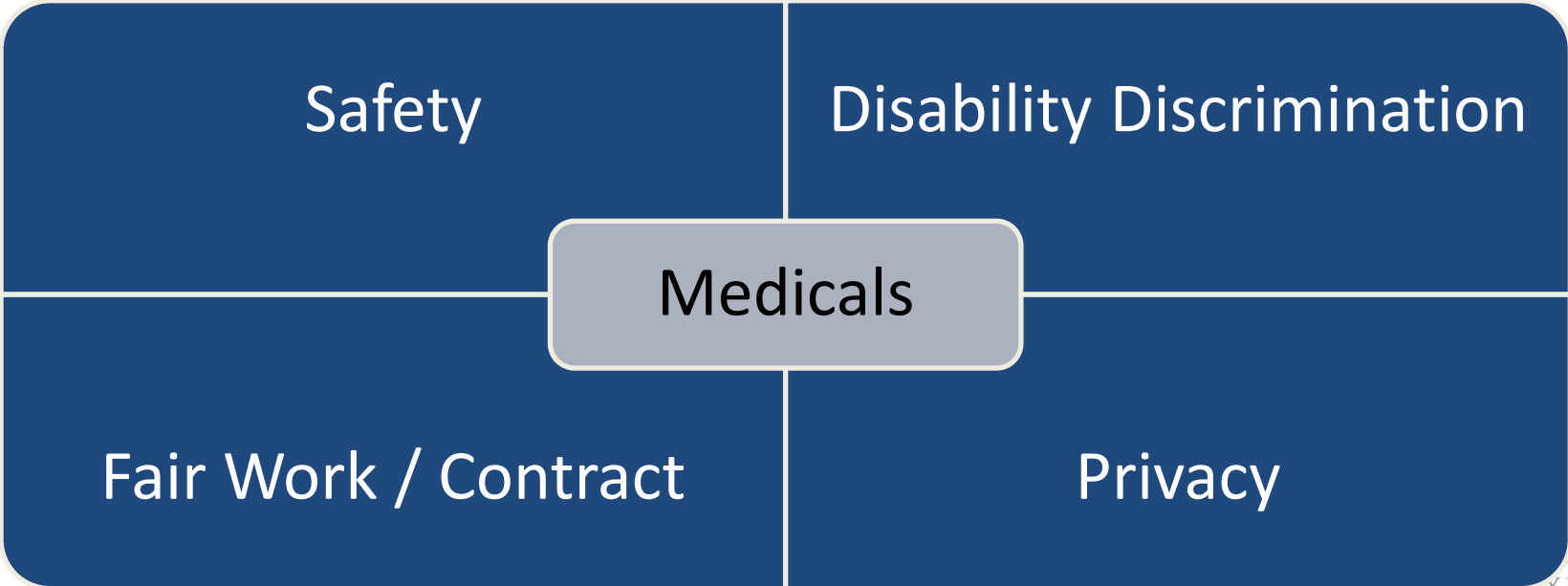
5. Have you or your current spouse/partner had a procedure for, or resulting in, sterilization (i.e. vasectomy, tubal ligation, or hysterectomy)?

No Yes, self Yes, spouse/partner

Overview

1. Legal context, key definitions
2. Cases
3. Tricky questions + answers
4. Inherent requirements checklist

Legal context



Safety

Work Health and Safety Act

- Ensure the safety of workers, so far as reasonably practicable

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- Ensure the safety of workers, so far as reasonably practicable
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- Create and maintain **safe systems of work**

Disability Discrimination

DD Act (Cth), Equal Opp. Act (SA)

- Less favourable treatment because of disability

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- **Inherent requirements**

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- **Inherent requirements**
- Must consider reasonable adjustments

Privacy

Privacy Act (Cth), APPs

- Employee records exemption

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- **Must treat medical information carefully**

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Privacy Act (Cth), APPs

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- **Must treat medical information carefully**
- Provide copies on request to unsuccessful applicants

Contract / Fair Work

Fair Work Act (Cth)

- Termination on the basis of incomplete / incorrect information

Contract / Fair Work

Fair Work Act (Cth)

- Termination on the basis of incomplete / incorrect information
- Use of probationary period

Cases

Chalker v Murrays Australia

- Applied for job as bus driver



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- Applied for job as bus driver
- Did not disclose mental illness



Cases

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- Applied for job as bus driver
- Did not disclose mental illness
- Urine test indicated prescription medication



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- Argumentative during assessment



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- Did not disclose mental illness
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- Not offered employment



Cases

Sellen v TNT

- Applied for job as delivery driver



Cases

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- Disclosed Asperger's syndrome during medical



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Tricky questions + answers

1. The applicant lied about their disability – can we terminate?
2. Drug testing results – what can we consider?
3. Timing of the medical with other steps of process
4. Powers to obtain information

Inherent requirements checklist

1. Documented matters

- Modern award, EBA
- JPS, PD etc

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2. **Circumstances of the job and workplace**
 - Work required and ability to perform essential parts
 - Market or customer service requirements

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3. **Importance of the requirement to the position**
 - Ability to work safely, effectively with others
 - Emergency or high workload requirements
 - Mandatory qualifications or imposed under law

Resources

- *Chalker v Murrays Australia Pty Ltd* [2017] NSWCATAD 112 (10 April 2017)
- *Sellen v TNT Australia Pty Ltd* [2015] SAEOT 6 (30 September 2015)