

Getting a job

An A to Z for employers and employees Pre-employment guidelines



Human Rights
Commission
Te Kāhui Tika Tangata

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INTRODUCTION

Getting a good job is a life-affirming experience. Meaningful work allows us to maximise our potential as human beings, provides us with financial security and is a powerful element in building a cohesive New Zealand.

Employers in New Zealand are facing acute skills and labour shortages that impact on productivity and competitiveness. Employers want to employ the best person for the job to enhance performance in both the private and public sectors. Equally, employees want to maximise their talents and potential in employment throughout their lives.

Work is a strategic entry point to a society free of discrimination. A key objective of the Human Rights Act 1993 is to protect people eligible to work in New Zealand from being discriminated against in their working lives.

A large number of enquiries and complaints to the Human Rights Commission concern pre-employment issues such as job advertising, job applications and interviews and job-selection processes.

Pre-employment processes generally go well when employers focus on the skills, experience and competencies required for the job. Employers can then attract and select the best person for the job against objective criteria. They can go wrong when applicants perceive they have been treated differently because of, for example, their sex, race, ethnic background, age, disability or sexual orientation.

The A to Z for employers and employees about getting a job is a set of guidelines aimed at ensuring equality and fairness for all job applicants regardless of characteristics such as gender, ethnicity, age, disability and religion.

Section 17(d) of the Human Rights Act 1993 authorises the Equal Employment Opportunities Commissioner to develop guidelines to promote best practice in equal employment opportunities, including codes that identify related rights and obligations in legislation.

The A to Z has been compiled with reference to the questions asked most frequently of the Human Rights Commission. The guidelines have been informed by comment from employers' groups such as Business New Zealand, the Auckland Chamber of Commerce, the Canterbury Employers' Chamber of Commerce and from trade unions through the New Zealand Council of Trade Unions.

The EEO Trust, the Recruitment and Consulting Services Association Ltd, the Human Resources Institute of New Zealand, employment experts such as Human Value and disability groups also made suggestions on earlier drafts. We are grateful for their help and advice.

I especially thank Robert Hallowell, the Human Rights Commission's Legal Counsel for his work on the A to Z.

Judy McGregor
Equal Employment Opportunities Commissioner
Kaihautu Ōritenga Mahi

The A to Z Guidelines for employers and employees about pre-employment was compiled from frequently asked questions and enquiries and complaints made to the Human Rights Commission. The Guidelines have been compiled to help employers, recruiters and job-seekers who want to comply with the Human Rights Act 1993 (the Act).

A full index can be found at the back of this publication.

Advertising: see → Job advertising

Age

Can an employer ask me my age as part of the job application process?

No, an employer should not ask you to provide your age as part of the job application or interview processes.

The Act provides protection against age discrimination once you reach the age of 16 and there is no upper limit on age discrimination.

It is good practice for an employer not to ask about a job applicant's age or to actively seek out the applicant's date of birth.

It is also good practice for an employer not to ask a job applicant about the dates of attendance at schools or other educational institutions as this may indicate the age of the applicant. Good employment practice means the best person for the job, regardless of age.

The Act provides a number of exceptions for age discrimination, including:

- where being of a particular age or in a particular age group is a genuine occupational qualification, for example managing licensed premises
- where for reasons of authenticity being of a particular age is a genuine occupational qualification, for example an actor
- in employment performed wholly or mainly outside New Zealand and the laws, customs, or practices of the country in which the work takes place require they be carried out by someone of a particular age group
- in domestic employment in a private household
- in work involving national security, if that work requires a secret or top-secret security clearance, an employee must be 20 years or over.

Can an employer advertise for a young person so the business can project a youthful image as most of the customers are young people?

No, it is unlawful to publish a job advertisement that could reasonably be understood as indicating an intention to discriminate on the basis of age. Age discrimination is covered by the Act. An advertisement of this type would be at risk of breaching the Act as it could be seen as indicating an intention not to employ older applicants.

The prohibited grounds of discrimination are listed in Appendix 1.

What can I do if I'm fit and healthy but I've been told I'm too old for the job?

Unless an exception applies, an applicant declined a job offer because of age will have grounds for an age-discrimination complaint to the Human Rights Commission.

Can an employer identify in a job advertisement a distinction between junior and senior positions without this being seen as age related?

Yes, however, "senior" is best used only if it is a true description of the nature of the job and refers to the required level of expertise and competence rather than to the employee's age. Consider using words such as "principal" or "experienced person" instead. A safe way of indicating a job's level is to set out the expected salary range.

Similarly, "junior" should only be used if it refers to the level of expertise or competence, not to the employee's age. Consider an alternative word such as "assistant".

AIDS: see → HIV

Appearance

Should I take out my body piercings for the job interview?

If a body piercing is an aspect of religion or ethnicity, the Act may provide protection against discrimination. For example, for females from South Asia a nose stud may be part of religious belief or ethnicity.

Body piercings other than those associated with religion or ethnicity are not protected by the legislation. For example, an employer can probably ask an employee, while at work, to remove a tongue stud worn for decorative purposes.

Babies and childcare

Can an employer concerned about ensuring business continuity ask job applicants about their childcare arrangements?

Asking questions about childcare arrangements at a job interview could lead to

complaints of discrimination. For example, if the job requires that an employee be away from home for extensive periods all applicants should be asked whether they can meet this requirement. The Act protects everyone responsible for the care of children or other dependants from discrimination as well as those who do not have caring responsibilities.

see also → **Paid parental leave**

Behaviour-based questions

What type of questions can I expect during a job interview?

A job applicant could be asked what are called behaviour-based questions during a job interview, particularly by government agencies. Such questions are asked to explore the use of a particular skill or competency or to check out reactions to a specific situation. Behaviour-based questions often start with a question like, "tell me about a time when..."

The job applicant is expected to talk about particular situations requiring the application of skills or competencies, such as involvement in teamwork or use of communication skills. The job applicant should describe what happened, what they did and what the outcomes were. It is important for all job applicants to think about the interview in advance and what skills and experience the employer is looking for. Interview preparation could include examples that a job applicant can talk about. For more information on behavioural interviewing see:

<http://web.mit.edu/career/www/guide/star.html>

Migrants and refugees may find behaviour-based questions a novelty and a challenge because they may not be used in their countries of origin. Employers could consider basing behaviour-based questions on the Curriculum Vitae (CVs) of all applicants or on common work scenarios that can be put to all candidates.

see also → **Interview**

Benefits

Can an employer refuse to employ me because I'm on a benefit under the Social Security Act such as the sickness benefit, or unemployed, or if I am receiving Accident Compensation Commission (ACC) payments?

No, the Act prohibits discrimination against those who are unemployed or receiving ACC payments or social security benefits. It also prohibits discrimination

because a person has previously been unemployed or received ACC payments or social security benefits.

An employer should avoid asking questions about being in receipt of social security benefits or ACC payments or being unemployed. Questions like this could be seen as indicating an intention to breach the Act and lead to complaints. Once someone has started work, continued receipt of ACC compensation or benefit payments could be unlawful.

Questions about a job applicant's employment history should be seeking to determine ability to do the job and not why the applicant was absent from the workforce.

Breastfeeding: see → Pregnancy

Credit checks

Can an employer run a credit check on me?

Yes, if there is a legitimate reason for doing so such as the job involves dealing with such things as money, accounts, financial administration. Ideally any credit check should be limited to the short-listed job applicants. Generally speaking, credit checks should not be undertaken in order to create the shortlist of applicants. There is a requirement for consent from the job applicant if the employer wishes to undertake a credit check.

Criminal records

Can an employer require me to disclose my criminal record?

Yes, if the criminal convictions are recent.

The Human Rights Act does not deal with the disclosure of criminal records but the Criminal Records (Clean Slate) Act can help those with convictions to put the past behind them. The clean slate law gives some right, in some circumstances, to withhold information about convictions. The main conditions you must meet are:

- no convictions for the last seven years
- never received a custodial sentence, for example imprisonment, corrective training, borstal.

Job applicants who want to know more about the clean slate law should seek independent legal advice from a lawyer or community law centre or get information from the Department of Labour helpline: 0800 20 90 20.

see also → **Police vetting**

How does the clean slate law impact on what questions an employer can ask a job applicant either in an application form or in an interview?

The law applies to employment and any other situation where an individual may be asked about criminal convictions, for example tenancy, insurance and bank application forms.

The law enables someone who meets the eligibility criteria to respond to a question asked about convictions or criminal record by stating that they have no criminal record.

It is an offence for someone without lawful authority to ask or require another person to disclose a criminal record when that person is entitled by law not to. The offence carries a maximum penalty of \$10,000.

The Ministry of Justice has a pamphlet on the clean slate law:
<http://www.justice.govt.nz/pubs/other/2004/clean-slate/english.html>

Employers with queries about the law should seek independent legal advice from a lawyer or employers' organisation.

Disability

Can an employer advertise that it is a requirement of the job to have good physical mobility?

Yes, provided that it is one of the essential competencies needed to perform the job. For example, an employer who wishes to hire an electrician to work on-site whether that is in commercial, industrial or residential buildings, may require good physical mobility as an essential qualification to perform the job. However, good physical mobility for an administrative job may not be considered an essential competency.

The Act contains a concept known as reasonable accommodation. Reasonable accommodation entails making changes to the workplace in order to ensure equal employment opportunities. For example, changes might include installation of a cordless phone or modification of hours or patterns of work. Many such adjustments can be made with minimal expense and disruption.

All new employees, not only disabled people, involve cost to an organisation in the provision of office space, computers and other resources, induction processes and training. A disabled employee may be able to be accommodated for very little extra cost and some can bring their own assistive technology into the workplace. In some cases employers may be unaware of assistive technology, for example a large computer screen for a visually impaired person could ensure they can perform the tasks required.

Where the applicant would otherwise be the best person for the job but:

- it is not reasonable to accommodate that applicant's needs, or
 - to do so would entail unreasonable disruption to the employer's activities
- there is no legal obligation to employ that applicant.

Can an employer test me to ensure I am not a carrier of illnesses or diseases?

Yes, if being free of illnesses or disease is an essential qualification for the job. For example, a hospital might want to ensure the staff is free of MRSA (Methicillin resistant Staphylococcus aureus). Not being a carrier could be seen as an essential qualification given the known risks MRSA poses to medical care. The hospital would need to assess the Act's reasonable accommodation requirements in considering job applicants.

The concept of reasonable accommodation is referred to in the question above and considered later under → **Reasonable accommodation**.

Do I have to disclose my hidden disability to a prospective employer?

No, if the hidden disability will not prevent the job applicant from carrying out the work satisfactorily. The employer should establish with all job applicants the requirements of the job and whether they have the abilities for the job. This could include asking whether there are any medical or physical conditions or disabilities that might prevent them from carrying out the work to a reasonable standard.

see also → **Honesty**

Can I ask an employer for vision-enhancing software to be installed on my computer or for my future workplace to be modified for my wheelchair?

Yes, if it is not unreasonable to do so. If the best applicant for the job has a disability that requires modification to the workplace or work practices so that the applicant could perform the job, an employer should undertake this work. As the

circumstances of each workplace will vary, it may well be that in some situations it will not be reasonable for the employer to undertake the necessary modifications. For example, it might be reasonable to provide vision-enhancing software but not to install a lift in order to provide access.

see also → **Reasonable accommodation**

Discrimination

What is discrimination?

Discrimination is not defined in the Human Rights Act. The Act simply makes it unlawful to treat anyone differently, subject to certain exceptions, on any of the grounds listed in s. 21(1) of the Act. The prohibited grounds of discrimination are listed in Appendix 1.

The Commission will accept a complaint if:

- there is evidence that a person has been treated differently
- the different treatment can be attributed to one of the grounds of unlawful discrimination
- the treatment results in disadvantage.

If you have any questions about discrimination please contact the Human Rights Commission on 0800 496 877 or by email infoline@hrc.co.nz

Domestic employment

Can I advertise for a young person to be a nanny in my house?

Yes, where the job is one of domestic employment in a private household, the Act permits different treatment based on age, disability, political opinion, religious or ethical belief, sex or sexual orientation. It does not permit different treatment based on marital status, colour, race, ethnic or national origins, employment status or family status.

Dress code

Can an employer ask me to comply with a particular dress code, such as how to arrange my hair or what I must wear at work?

Yes, if the employer has policies, for example a health and safety policy that

requires the wearing of a uniform or a dress code, or a policy relating to appearance and grooming that may require a change of appearance or hairstyle. However, the Act may protect against discrimination where appearance or hairstyle is an aspect of religion or ethnicity. For example, an employee who is a Sikh and wears a turban will not have to remove it unless wearing the turban would breach health and safety requirements.

Appearance or hairstyle that is not an aspect of religion or ethnicity is not protected by the Act.

Drug testing

Can an employer refuse me a job because I will not take a drug test?

There is nothing in the Act that prohibits an employer from insisting on drug testing. Whether it is appropriate for a job applicant to undergo a drug test will depend on the nature of the job. Testing can be a legitimate requirement for a safety-sensitive role or environment. There are certain occupations, for example a pilot or a bus driver, where being drug free is a genuine occupational requirement because of public safety.

The quality of testing devices on the market may be questionable. Job applicants should be provided with and have the right to challenge the results. For example, a job applicant who is on the methadone programme may be fully safe to do the work and should not be rejected out of hand because of a failed test.

Section 19 of the Health and Safety in Employment Act imposes a duty on an employer to take all practicable steps to ensure the employee's safety while at work and that no action of the employee while at work causes harm to any other person. In a 2004 decision the Employment Court commented that section 19:

“strongly suggests, although it is a question of degree, that employees in occupations which impinge upon the safety of other persons, must see to it that they come to work substantially (perhaps, depending on the work completely) free from the influence of alcohol or drugs. Because of this duty, they must expect to co-operate with the employer's attempts to monitor the situation.”

Entitlement to work in New Zealand

Can an employer ask me if I am entitled to work in New Zealand?

Yes, as it is unlawful for employers to take on employees who are not entitled

to work in New Zealand. Either in the job interview or on the application form all applicants should be asked whether they are entitled to work here, though not about their country of origin. The job applicant's answer should confirm that the applicant is a New Zealand citizen, or a permanent resident, or has a current work permit.

What evidence of entitlement to work in New Zealand can an employer require a job applicant to produce?

Employers should seek evidence of entitlement to work in New Zealand before making an offer of employment. Employers may, but need not, ask for documentation such as passports, birth certificates, citizenship certificates or residence permits, or Australian residence return visas.

New Zealand citizens (including people from the Cook Islands, Niue, and Tokelau) and Australian citizens do not need a permit to work in New Zealand and nor do residents of New Zealand and Australia.

A New Zealand passport, birth certificate, citizenship certificate or residence permit shows that a job applicant is entitled to work in New Zealand. An Australian passport, Australian permanent residence visa or Australian resident return visa is also proof of entitlement to work in New Zealand.

The passports of job applicants not from New Zealand, the Cook Islands, Niue, Tokelau or Australia will need to have either a New Zealand residence permit or work permit label or stamp to provide proof of entitlement to work in New Zealand.

The Department of Labour is able to provide detailed information about entitlement to work in New Zealand; telephone 0508 55 88 55; or visit the Department's website www.immigration.govt.nz

Ethnicity or national origins

Is an employer able to interview only applicants from a particular ethnicity or national background on the basis that a majority of customers are from that ethnicity or national background?

No, in most circumstances to interview only applicants from a particular ethnicity or national background because of the customers' preferences will breach the Act. However, an employer can consider an applicant's ethnic or national origins

if the job is that of a counsellor on highly personal matters such as sexual matters or the prevention of violence.

Equality

Can an employer attempt to create a “level playing field” by advertising for a young person, or a Māori, or a Pacific person or a female?

The Act allows employment initiatives to assist people against whom discrimination is unlawful and who need assistance in order to achieve an equal place with other members of the community. This is known as positive discrimination or affirmative action or special measures. The Human Rights Commission has published a four-page pamphlet *Guidelines on Measures to Ensure Equality*; the Guidelines can be downloaded from:

http://www.hrc.co.nz/hrc_new/hrc/cms/files/documents/18-Mar-2007_18-54-53_Special_Measures_A4_Final_PDF.pdf

A copy of the Guidelines can also be obtained from the Commission by telephoning 0800 496 877 or by sending an email to infoline@hrc.co.nz

Family status

Can I be asked whether I have children?

No, employers should avoid asking job applicants whether they have children or other dependants or for details about other dependants, such as their age. The Act protects from discrimination both those who do and those who do not have children or other dependants.

Flexibility

Can I ask at my job interview for the right to flexible work so I can care for my children after school?

Yes, a job applicant can always ask an employer about flexible working hours and, if these are granted, they will become part of the terms of employment if the applicant gets the job. From 1 July 2008 anyone with caring responsibilities employed for six months by the same employer is entitled to request a variation in working arrangements for caring purposes. An amendment to the Employment Relations Act will provide a process for making a request which the employer will

then be required to consider. The employer can refuse the request only on one of the grounds set out in the Act and the employee can appeal the employer's decision. For more details refer to:

www.ema.co.nz/advice/Flexible_work_guide.doc

The Human Rights Commission considers that flexible work arrangements are an important element in providing equal employment opportunities to groups who are often overlooked or marginalised, parents and carers in particular, see:

www.neon.org.nz/eoissues/wlb/

Gay: see → Sexual orientation

Gender identity: see → Transgender/Trans people

Good employer

What does being a “good employer” mean in relation to recruitment and selection processes?

State sector employers, including Crown entities and companies, are obliged to be good employers under the State Sector Act 1988 and the Crown Entities Act 2004. Under those Acts a good employer is one who operates a personnel policy containing provisions generally accepted as necessary for the fair and proper treatment of employees in all aspects of employment, including the impartial selection of suitably qualified persons for appointment.

The Human Rights Commission provides advice on being a good employer in relation to recruitment and selection. The NEON website provides resources for employers, see:

<http://www.neon.org.nz/crownentitiesadvice/>

The advice was developed originally for Crown entities and this is why 'Crown entities' are specifically addressed throughout the text. However, the guidance is equally relevant to all employers – the private sector, the non-government sector and the wider state sector.

Health

Can an employer ask me during the job application process or at interview to disclose my medical/ACC history?

No, an employer should not ask for general information about a job applicant's medical/ACC history. The employer's objective should be to establish whether the applicant is able to do the job. The job applicant should be told what the job's requirements are and then asked about medical or physical conditions or disabilities that might prevent the applicant from carrying out the work satisfactorily.

Can an employer offer me a job subject to a satisfactory medical examination?

Yes, an offer of employment can be made conditional upon passing a satisfactory medical examination which may include a drug and alcohol test.

HIV

Do I have to disclose in the job application process that I am HIV positive?

No, it is unlawful to discriminate against people with the HIV virus. The definition of disability in the Act includes the presence of organisms in the body capable of causing illness.

The Act does have a risk of harm exception which could be relevant depending on the duties of the job. For more information on this exception see **Risk of harm**.

Honesty

Is it discrimination if an employer discovers a job applicant has not been truthful in a job application and withdraws a job offer?

In most situations it would not be discriminatory if an employer withdrew the offer of a job. Job applicants should honestly answer questions asked in a job application form and during an interview. After several high-profile cases where applicants had falsified educational qualifications, more rigorous checking of qualifications is now increasingly common. An employee may also be subsequently dismissed for dishonesty during the application or interview process.

see also → **Health; Qualifications**

Indirect discrimination

Can an employer specify physical characteristics such as height, weight or strength as being essential for the job?

Yes, provided the physical characteristics are essential in order to perform the job satisfactorily or in order to meet safety requirements. For example, a bus

company might specify that drivers have to weigh less than 100kg because the driver's seat is only manufactured to carry a weight of no more than 100kg.

see also → **Overweight/obesity**

An employer who wishes to specify physical characteristics as part of the qualifications for the job needs to remember that the Act prohibits indirect discrimination. Indirect discrimination occurs when an apparently neutral job condition or requirement has the effect of excluding some job applicants on one of the grounds prohibited by the Act. For example, a minimum-height requirement is likely to have more effect on women than on men and, as well, may have more effect on men from some ethnic groups than from others. Therefore physical characteristics may only be specified if there is a genuine reason for doing so.

The Act provides a "good reason" defence to a complaint of indirect discrimination. This is that there are objectively sound reasons for the practice that are unrelated to any prohibited form of discrimination.

Interview

Is an employer required to have a gender and/or ethnicity balance on an interview panel?

No, there is nothing in the Act requiring a gender and/or an ethnicity balance on an interview panel. However, it is desirable for medium to large-size firms to achieve a gender and/or an ethnicity balance on interview panels to ensure job applicants of either sex and of different ethnicities are not overlooked. Having such a balance is likely to reduce the effects of any stereotypes.

Can I take a support person to my job interview?

There is nothing in the Act which covers taking a support person to a job interview. A job applicant wishing to bring a support person to the interview should tell the employer before the interview.

see also → **Behaviour-based questions**

Job advertisements

Can an employer advertise for a "girl Friday," a "barmaid", a barman", a "waiter", "waitress"?

The Act prohibits the use of words which have a gender connotation in job

advertisements, for example barman, unless the advertisement contains an indication that it is open to both sexes to apply.

Can an employer advertise for a staff member to work in a “fast-paced, high-energy, noisy environment with no experience needed but a sense of humour essential?”

Nothing in the Act prohibits this type of advertisement but if the words and description are interpreted as code for “no one aged over 25 need apply” then an older applicant might complain of indirect age discrimination.

Can an employer advertise for a “mature” worker?

No, the word “mature” is often associated with age and is probably best avoided. Alternative words such as “responsible” or “capable” or “possess initiative” or “have good judgment” usually more accurately describe the qualities the employees need to have.

Can an employer advertise for applicants with te reo Māori expertise?

Yes, provided that te reo Māori expertise is a required job competency and not being used as means of employing only Māori.

Am I responsible as an employer for a job advertisement that has been placed by a recruitment consultant?

Yes, liability for advertising which breaches the Act rests both with the person or organisation that places the advertisement and with the recruitment consultant. Where the organisation placing an advertisement is a recruitment consultant, the employer as well as the recruitment consultant is liable for any breaches of the Act.

see also → Liability; Knowledge

Kids

Can I be asked if I intend to have kids?

An employer should avoid asking questions relating to pregnancy, proposed pregnancy, contraception or family planning, or parenthood. Questions of this type would be at risk of breaching the Act as they could be seen as indicating an

intention not to employ applicants who have responsibility for children or alternatively an intention not to employ applicants who do not have responsibility for children.

Knowledge

Is ignorance of the Act a defence to a complaint of discrimination?

No, ignorance of the Act is not a defence to a complaint of discrimination. An employer can also be liable for breaches of the Act by a recruitment consultant or by the acts of employees.

An employer may be liable for the acts of an employee unless the employer shows that reasonably practicable steps were taken to prevent the employee from doing the act.

see also → **Job advertising**

Lesbian: **see** → **Sexual orientation**

Liability

If I publish or display a job advertisement can I be responsible if it breaches the Act?

A person or organisation publishing or displaying a job advertisement which indicates an intention to breach the Act may be liable for the breach of the Act.

see also → **Knowledge**

Marital status

Can I be asked at a job interview if I'm married, in a civil union or a de facto relationship, single, divorced or separated?

No, you should not be asked about your marital status. There are, however, situations in which an employer is entitled to enquire as to whether a husband, wife, partner, spouse works with that employer or elsewhere in the same industry. Please read the information relating to **Partners** for an explanation of when this might happen.

Medical: **see** → **Health**

Mental illness

Can I be asked if I have ever experienced mental illness, for example depression?

No, an employer should not ask to be provided with general information about a job applicant's medical/ACC history but should seek to establish only whether a job applicant has the abilities needed for the job. This includes establishing whether an applicant has any medical conditions or disabilities that might mean the work could not be satisfactorily carried out.

Mental illness is part of the definition of disability which is one of the grounds of discrimination prohibited by the Act. Appendix 1, which sets out the prohibited grounds of discrimination, includes the full definition of the meaning of disability.

A job applicant should first be made aware of the job's requirements and then asked about any medical conditions or disabilities that might prevent them carrying out the work satisfactorily.

Job applicants who have experienced mental illness often do not disclose that fact because they fear discrimination.

Migrants

What are my rights as a migrant to access work?

Migrants have the same rights in relation to pre-employment and employment as others in New Zealand. The Human Rights Commission has the statutory functions of leading equal employment opportunities and encouraging the development of harmonious relations between individuals and the diverse groups in New Zealand society. Decent employment is widely regarded as a critical element in the social and economic integration of migrants and refugees.

Unfortunately, barriers to accessing suitable work mean many migrants experience delays in getting jobs or are under-employed in jobs that do not make best use of their qualifications and experience. Migrants suffer prejudice, fear of difference and inter-cultural misunderstandings and often have language difficulties. Recent research shows the more similar migrants are in looks, language and European heritage to New Zealanders the more successful they are in securing employment. Another study shows discrimination in job short-listing against those with non-Anglo-Saxon names.

Migrants who believe that they have been discriminated against in pre-employment such as short-listing or in the interview process should contact the Human Rights Commission on 0800 496 877 or by email infoline@hrc.co.nz

see also → **Xenophobia**

How can employers attract job applications from migrants?

Employers wanting to increase staff diversity need to audit their recruitment and selection processes to ensure they are not indirectly filtering out applications from migrants. For example, how a job is advertised including whether it concentrates on core competencies or irrelevant characteristics, can either encourage or dissuade migrant applications. Where and how the position is advertised, the style, tone and tenor of the advertisement and whether it uses EEO statements and shows commitment to diversity are important. Overseas research shows that selection panels which include minority members improve the success rate for migrants. Interviewers who have been trained to avoid “like me” bias also increase the chances of successful migrant employment. Training is important for all members of selection panels.

Moko: see → **Tattoos**

Non-discrimination

What legislation should an employer be aware of when hiring staff?

The Human Rights Act is an important piece of legislation that employers should be familiar with. One of its key objectives is to protect New Zealanders from being discriminated against in their working lives by ensuring no unfair barriers exist for people seeking work. The Employment Relations Act also sets out the same prohibited grounds of discrimination.

Overweight/obesity

If I am rejected for a job because I'm overweight, does this breach the Act?

No, body size or obesity is not a protected ground of discrimination under the Act. From time-to-time there has been debate about whether it should be a prohibited ground of discrimination. It is possible that discrimination on the grounds of a person's body size or obesity might constitute disability discrimination,

particularly if it is a symptom of a medical condition. There is no case law in New Zealand to provide any guidance on the issue at present.

see also → **Indirect discrimination**

Paid parental leave

Should I ask about paid parental leave at my job interview?

All job applicants are entitled to ask about paid parental leave. This is a 14-week period available to employees who, by the time the time a baby is born or a child of up to five years of age is adopted, have worked for at least six months for the same employer. Other eligibility requirements are set out in the Parental Leave and Employment Protection Act 1987. For more information see:

<http://www.ers.govt.nz/parentalleave/>

see also → **Pregnancy; Babies and childcare**

Partner, spouse or relatives

Can I be asked whether I have a partner, spouse or relative working with the organisation or with a competitor of the organisation?

Yes, an employer can ask whether you are:

- married to; or
- in a civil union or de facto relationship with; or
- a relative of

anyone who works at that workplace or elsewhere in the same industry. The Act permits employers to impose restrictions if any of the situations set out above apply and there is either a reporting relationship between the employees or there is a risk of collusion between them to the employer's detriment.

Photographs

Can an employer ask me to provide a current photograph of myself as part of my application?

Nothing in the Act prevents an employer from making such a request. However, a photograph should not be used to determine particular characteristics so as to avoid interviewing a job applicant because of, for example sex or age or ethnicity or any other prohibited ground of discrimination.

Police vetting

Can an employer require me to undertake a police vetting as part of the job application process?

There are some jobs involving providing care to children, older people or more vulnerable members of society where it might be a requirement of the job application process for an applicant to be vetted by the Police. This is different to a criminal record check. The information provided by the Police may be different to that provided by a criminal record check. For more information see:

<http://www.police.govt.nz/service/vetting/guidelines.html#results>

Any concerns about the accuracy of the information supplied by the Police should initially be taken up with the police vetting service.

see also → **Criminal records**

Political opinion

Can an employer ask job applicants about their political opinions?

No, an employer should avoid asking about a job applicant's political views or membership of political organisations. Political opinion discrimination is prohibited by the Act.

Do I have to disclose in a job interview that I'm a member of a political party?

No, generally speaking you are not required to disclose that you are a member of a political party. However, if you are seeking employment as:

- a political adviser or secretary to a member of Parliament; or
- a political adviser to a member of a local authority; or
- a political adviser to a candidate seeking election to the House of Representatives or to a local authority
- a member of the staff of a political party

the Act allows the asking of questions about political opinions. Unless this exception applies, the Act does not require a job applicant to disclose membership of a political party.

Pregnancy

Do I need to reveal at my job interview that I am pregnant?

No, the Act prohibits an employer refusing employment because a job applicant is pregnant.

A job applicant should be made aware of the requirements of the job. All job applicants should be asked about any medical or physical conditions that might prevent carrying out the work satisfactorily.

If the job involves exposure to chemicals or hazardous substances known to have adverse effects on pregnant women the Act allows an employer to point this out either on the application form or during the interview.

In these circumstances it would be wise for a pregnant applicant to make the employer aware of her pregnancy.

Overseas case law suggests that it is unlawful for an employer to decide in advance not to employ women of child-bearing age because of a hazardous working environment. The job applicant should be informed of the risks and be free to decide whether to accept any offer of employment that might be made.

However, if an employer becomes aware of an employee's pregnancy, the requirement under health and safety legislation to protect all employees' health may, if hazardous work is involved, mean the employee will temporarily have to be transferred to a different job.

see also → **Paid parental leave**

Can I ask an employer what arrangements can be made for me to breastfeed my baby at work?

Yes. Recognising that many women now return to work earlier after having children good employers do their best to provide them with the privacy and the facilities required for breastfeeding. However, New Zealand has not ratified the International Labour Organisation Convention which outlines the minimum standards for breastfeeding breaks and facilities at work. Proposed new infant feeding legislation requires employers to provide unpaid time and facilities for breastfeeding employees.

The Human Rights Commission considers that the right to breastfeed at work and in public life is part of the right to be free from discrimination on the grounds of

sex under the Human Rights Act. The Employment Relations Act also contains anti-discrimination provisions which apply to breastfeeding women. However, breastfeeding is not identified in the anti-discrimination legislation whereas “sex, which includes pregnancy and childbirth” is. *Your Rights as a Breastfeeding Mother* is available at: <http://www.neon.org.nz/documents/breastfeedingflyerEnglish.doc>

The Department of Labour has produced *Breastfeeding in the Workplace: an employer's guide to making it work* which is available at www.ers.dol.govt.nz

Privacy

Can an employer ask previous employers for information about a job applicant?

In most circumstances personal information should be collected directly from a job applicant unless the applicant grants permission to do otherwise. Generally an employer should not seek information about a job applicant from a current or former employer without the job applicant's consent.

How long should an employer hold the Curriculum Vitae (CV) of an unsuccessful applicant?

It is a good idea for the employer and the job applicant to agree on how long the CV will be kept before it is destroyed. Sometimes this can be overlooked so it is a good idea for an employer to establish a standard set of procedures dealing with how long CVs will be retained. It is appropriate to allow a reasonable period of time to pass before an employer either returns or destroys the CVs of the unsuccessful applicants.

If I am an unsuccessful applicant can I ask for my CV to be returned and for all information about me to be destroyed?

Yes, you can ask for this to happen but it is necessary to be aware that an employer can use information about unsuccessful job applicants if a complaint is made about the decision as to who to employ. Unsuccessful candidates' CVs may be kept on file in case other vacancies arise, but the employer and job applicants should agree on this during pre-employment processes.

see also → Unsuccessful application

Can an applicant access information that an employer collects in the course of assessing applications?

Yes, the Privacy Act does, however, provide limited reasons for withholding of material, for example when a reference has been supplied in confidence. If a request for access is refused, the applicant can ask the Privacy Commissioner to investigate whether or not the refusal was justified. The Privacy Commissioner can be contacted by phone on 0800 803 909 or by email: enquiries@privacy.org.nz

Qualifications

What qualifications should an employer ask for?

Every job has competencies that successful applicants need to perform to a reasonable standard. In some cases a specific qualification such as a relevant specialist degree or a technical or trades qualification is essential. For some occupations the existence of formal qualifications, such as a medical degree for doctors is part of professional accreditation. In other cases qualifications may not be essential to the job. Employers should ensure that in job advertising, short-listing for interviews and the interview process, that the qualifications they are seeking are both necessary and relevant for the job.

Applicants need to maximise in their CVs and job applications the connections between their experience and the skills required for the job. For example, volunteer or unpaid work may involve skills such as time management, budgeting, administration and relationship management that are transferable and relevant to a paid job.

see also → **Honesty**

Questions

Where can employers get information and best-practice guidance about job advertising, interviewing and the appointment process?

In addition to the Human Rights Commission – telephone: 0800 496 877 (toll free) or by email: infoline@hrc.co.nz – an employer could obtain information and best practice guidance from:

- Business New Zealand
telephone: 04 496 6555; website: <http://www.businessnz.org.nz/contactus>

- Employers And Manufacturers Association (Northern) Inc.
telephone: 0800 800 362 or by email: ema@ema.co.nz
- Employers and Manufacturers Association (Central)
telephone 04 433 7224 or by email: ema@emacentral.org.nz
- Canterbury Employers' Chambers of Commerce
telephone: 03 366 5096 or by email: info@cecc.org.nz
- Otago-Southland Employers' Association
telephone: 03 455 5165 or by email: Duncan@osea.org.nz
- Department of Labour
telephone: 0800 20 90 20 or by email: info@dol.govt.nz
- Equal Employment Opportunities Trust
telephone: 09 525 3023; website: <http://www.eeotrust.org.nz/index.cfm>
- Recruitment and Consulting Services Association Ltd
telephone: 09 813 9926

Where can job applicants get information about their rights and responsibilities relating to job advertising, interviewing and the appointment process?

In addition to the Human Rights Commission – telephone: 0800 496 877 (toll free) or email: infoline@hrc.co.nz – a job applicant could obtain information guidance from:

- Department of Labour
telephone: 0800 20 90 20 or by email: info@dol.govt.nz
- Equal Employment Opportunities Trust
telephone: 09 525 3023; website: <http://www.eeotrust.org.nz/index.cfm>
- a trade union; the website for The New Zealand Council of Trade Unions is: http://union.org.nz/staff_details
- a Community Law Centre
website: <http://www.communitylaw.org.nz/>
- Citizens' Advice Bureaux
website: <http://www.cab.org.nz/contact/indexdirection.html>

Race

Can I be asked to complete a job application form that asks me to indicate my race?

No, discrimination on the basis of race is prohibited by the Act. Employers should avoid asking questions or seeking information about the race, colour, ethnic or national origins of job applicants unless they are collecting anonymous statistical data for EEO reporting or for profiling who responds to their job applications. If an employer is collecting data for such purposes it should ideally be collected on a form that is separate from the job application form.

Reasonable accommodation

What is reasonable accommodation and what does it require of an employer?

Reasonable accommodation is not straightforward, either as a concept or how it is dealt with in the Act. Reasonable accommodation is used to describe the creation of an environment that is intended to ensure equality of opportunity to meet:

- the particular practices of an employee's religious or ethical beliefs; or
- the employee's needs in relation to a disability; or
- the employee's needs in relation to family commitments.

Reasonable accommodation can entail modifications or adjustments which will, for example, allow a job applicant with a disability to participate more equally in a workplace. It can involve physical adjustments such as ensuring access to a building or modifying the way a job is done, for example allocating aspects of the job to another employee.

The Act creates a clear obligation in relation to meeting the particular practices of an employee's religious or ethical beliefs. An employer is obliged to reasonably accommodate an employee's religious beliefs provided that does not unreasonably disrupt the employer's activities.

The Act does not require changes that would unreasonably disrupt an employer's activities. The Act provides a number of defences but before an employer can rely upon them the employer needs to genuinely consider whether the job could be adjusted by assigning those aspects of it that the job applicant is unable to do to another employee.

There is no case law in New Zealand on what is an unreasonable disruption. It is, however, likely that what is reasonable will depend on the circumstances, taking into account factors such as:

- health and safety;
- cost (in relation to the size of an employer's business); and
- the activities or business of the organisation.

Does reasonable accommodation mean an employer has to spend money adapting equipment or the workplace?

The short answer is 'no'. However, as many adjustments are minor and involve minimal outlay, in the interests of equal employment opportunities and in attracting quality candidates, employers should try and accommodate a job applicant's needs.

Three training and employment support funds are available for people with disabilities in New Zealand. They are Training Support, Job Support, and Self Start. Each fund has set targets to assist people who have higher support needs. There is a focus on ensuring that the funds are used to cover the applicant's cost of disability. The funds encourage people with disabilities into mainstream employment. More information about the funds is available from Workbridge: <http://www.workbridge.co.nz/support-funds/index.shtml>

Recruitment consultants

Can an employer ask a recruitment consultant to ensure that the only job applicants who are short-listed are from a particular group, for example young or Pakeha?

No. In the publication *Tools for Tapping into Talent: a Recruitment Training Resource* <http://www.eeotrust.org.nz/toolkits/talent.cfm> the Equal Employment Opportunities Trust and the Recruitment and Consulting Services Association noted that many recruitment consultants have been compromised or embarrassed either by managers who require them to behave illegally, unfairly or unethically, or by their clients' discriminatory briefs. In such situations the Act applies equally to the recruitment consultant and to the employer.

Relatives

Can I complain about discrimination if I did not get the job because of the actions of a relative, for example my brother who was a previous employee was sacked for dishonesty?

Yes, the Act prohibits discrimination because of being a relative of a particular person. The Act has a broad definition of relative; it means any other person who:

- is related to the person by blood, marriage, civil union, de facto relationship, affinity, or adoption; or
- is wholly or mainly dependent on the person; or
- is a member of the person's household.

Religious belief

Can an employer ask job applicants if there is anything to prevent them working on Friday, Saturday or Sunday?

An employer should avoid asking questions about a job applicant's religious beliefs or the lack of a religious belief, church activities or participation in religious practices.

If an employer has a concern about a job applicant's availability to work on religious holidays, the schedule of work could be explained and the applicant asked whether this causes any difficulties. For example, if an applicant's religion does not allow work on Saturdays, and that applicant's shifts can be adjusted to accommodate this, the employer must do so, as long as this adjustment would not be unreasonably disruptive.

Can I ask an employer to provide me with a place for prayer at my workplace?

Where a religious belief requires its believers to follow a particular practice, an employer must accommodate the practice so long as any resulting adjustment does not unreasonably disrupt the employer's activities. Within particular workplaces it may be possible to provide a room or other designated place at the required times.

see also → **Reasonable accommodation**

Risk of harm

Can an employer treat me differently where there is a risk I might hurt myself, or others, due to my disability?

Yes, the Act provides an exception which allows employers to treat job applicants differently where there will be an unreasonable risk of harm to the applicant or to others which arises out of the duties of the job or the work environment. For example, a person with a serious visual impairment who applies for a job as a driver may fall within the exception.

If a job applicant has a disability an employer must decide whether there is a health or safety risk resulting from the applicant's disability and whether it is reasonable to take that risk.

Unless the job applicant is required to perform tasks that could involve a risk of harm an employer should avoid questions about disability. In the example given above of the driver, the employer would be perfectly entitled to ask questions about disabilities.

Where the risk of harm would be no greater than employing someone who does not have a disability, it would be unreasonable not to employ a disabled person who is the best-qualified applicant. The risk needs to be an actual risk rather than a perceived risk. For example, the risk of transmission of AIDS is almost non-existent without blood or sexual fluids being exchanged.

Risk assessment decisions are likely to be based on medical advice or other appropriate expert advice and the relevant evidence.

The Act places the onus on an employer to reduce any such risk to a normal level unless this cannot be done without unreasonable disruption.

Sex

Can an employer advertise for a male nurse to look after an elderly male patient who doesn't want a female nurse?

In this example it is probably going to be difficult to prove that being male is a genuine occupational qualification. The law in this area remains to be tested.

Sexual harassment

If I didn't get the job because I refused to be party to sexual activity, does the Act apply?

Yes, the Act makes it unlawful to make a request for sexual intercourse, sexual contact or any other form of sexual activity which contains an overt or implied promise of preferential treatment or an overt or implied threat of detrimental treatment. It is important for employers to ensure that interviewers and recruiters are trained to avoid sexual innuendo or other inappropriate behaviour and to have formal processes around the next stage of the process following an interview. Many organisations have policies that deal with sexual harassment; it is essential that the policy covers pre-employment as well as employment. Prevention of harassment and bullying is one of the seven key elements in being a good employer. See Good Employer advice on <http://www.neon.org.nz/crownentitiesadvice/>

Who can I complain to about sexual harassment during the job application or interview process?

A job applicant who has been promised a job, or not given a job, because of sexual harassment can make a complaint under the Act. The Employment Relations Act does not apply to sexual harassment in a pre-employment situation.

Sexual harassment can take place through:

- the use of language, written or spoken, of a sexual nature; or
- the use of visual material of a sexual nature; or
- physical behaviour of a sexual nature.

Sexual orientation

Can an employer refuse to offer me a job because of my sexual orientation?

No, but there are a limited number of situations where the Act says that the sexual orientation of a job applicant can be taken into account. The Act says sexual orientation means being heterosexual or homosexual or lesbian or bisexual.

What are the situations where the sexual orientation of a job applicant can be taken into account?

One is domestic employment in a private household:

see → **Domestic employment**

Another situation where the sexual orientation of a job applicant can be taken into account is where the job is that of a counsellor on highly personal matters such as sexual matters or the prevention of violence.

The sexual orientation of a person may also be taken into account in the ordination and engagement of clergy. There is a diversity of views between lawyers on the various legal issues, but provided the refusal to ordain or engage homosexual, lesbian or bisexual clergy can be properly described as a matter of religious belief in the relevant church, the Act does not forbid sexual orientation discrimination. In 2003 the Human Rights Commission published a discussion paper on the Act and gay and lesbian clergy which provides a full account of the issues. The paper can be found at:

<http://www.hrc.co.nz/home/hrc/newsandissues/lesbianandgayclergy.php>

or can be obtained by contacting the Commission telephone: 0800 496 877 (toll free) or by email: infoline@hrc.co.nz

Can an employer ask me about my relationship with my next-of-kin or emergency contact person when this will have the effect of disclosing that I'm gay?

An employer should avoid asking questions about the relationship between the job applicant and the person nominated as next-of-kin or emergency contact person. Ideally next-of-kin information should be obtained when employment commences rather than at the earlier stages of the employment process.

Should I remove information from my CV that may disclose that I am a lesbian?

Exactly what you disclose is up to you. Being required to disclose your sexual orientation could breach the Act.

Some organisations collecting EEO data through workplace profile information may ask about sexual orientation to ensure the recruitment catchment is as diverse as possible. Employers should avoid asking questions or seeking information about the sexual orientation of job applicants unless they are collecting anonymous statistical data for EEO reporting or for profiling who responds to their job applications. If an employer is collecting data for such purposes it should

ideally be collected on a form that is separate from the job application form.

Speaking English

If an employer needs someone who speaks English fluently what wording can be used in the advertisement?

The advertisement could read that the job requires the successful applicant to have spoken English at a specified level. An employer could indicate in the advertisement that short-listed candidates would undergo an oral competency test. This would provide an objective measure of oral competency. Only a few jobs will require this level of fluency and oral presentation skills.

Tattoos

Can an employer refuse to hire a job applicant with a tattoo when image is critical to the business?

A policy banning tattoos is not of itself unlawful. However, in enforcing such a policy an employer needs to be aware that if the tattoo is of religious or ethnic significance a complaint of indirect discrimination could be made.

Am I protected by the Act if I suspect my moko was the reason why I did not get the job?

Yes, an applicant who suspects that having a moko was the reason for not getting a job can make a discrimination complaint.

Trade union: see → Union membership

Transgender/Trans people

Should I disclose in the interview that I am transgender?

In most cases it is solely your decision whether you wish to disclose that you are transgender, as your sex or gender identity has no bearing on your ability to do the job. There are some very limited circumstances where it is legal to employ only a woman or a man for a particular position, i.e. being female or male is a genuine occupational qualification. In these limited situations, some transgender people may need to provide evidence about their sex.

Am I able to ask a transgender job applicant for any previous name, in order to verify identity?

If previous name details are required from all applicants, for a specific purpose, then you can ask a transgender applicant to provide the details. As disclosure of the information might have significant additional implications for a transgender job applicant, reassurance should be given that the information will only be used to verify identity and not for any other purpose.

It would be discriminatory to ask a transgender person to provide details of their previous name if this information was not required from other job applicants. Discrimination against transgender people comes under the ground of sex in the Act.

Information about human rights and transgender/trans people can be found at: <http://www.hrc.co.nz/transgenderinquiry>

Treaty of Waitangi

Can I be asked whether I have a proven understanding of, and commitment to, the Treaty of Waitangi?

Understanding of, or commitment to, the Treaty of Waitangi will in some cases be a requirement of the job and be a genuine occupational requirement. In other cases, given the place of the Treaty of Waitangi in New Zealand's constitutional principles, an understanding or knowledge of it will be necessary and desirable. This is different from requiring a commitment to the Treaty or making a job contingent on commitment to it. Information about the Treaty of Waitangi can be found at <http://www.waitangitribunal.govt.nz/treaty/>

Union membership

Does the Act cover being a trade union member?

No; the prohibited grounds of discrimination in the Human Rights Act do not cover being a member of a trade union. From time-to-time there have been proposals to include trade union activity as a prohibited ground of discrimination but they have not made it into the Human Rights Act.

There is case law in New Zealand which suggests that if there is a clear connection between the government and its policies and the activity being undertaken by the union or its members, that amounts to expression of a political opinion. Political opinion discrimination is protected by the Act.

The Employment Relations Act provides that an employer may not:

- decline to employ someone because that person is a union member
- offer inferior terms and conditions of employment to employees because they are union members.

The Employment Relations Act also provides that an employer may not:

- decline to employ someone because that person is not a union member
- offer inferior terms and conditions of employment to employees because they are not union members.

Under the Employment Relations Act employees have an absolute right:

- to choose to join a union or to choose to not join a union
- to join a particular union in preference to joining some other union
- to resign from a union.

It is illegal for anyone to use undue influence to try to make another person join or not join a union or to resign from a union. Undue influence may include an employer threatening to make life difficult for, or dismiss, someone unless the employee resigns from a union.

Employees who have been engaged in union activities have some special protections under the Employment Relations Act. Such activities include an employee being a union officer or delegate or collective bargaining representative, or an employee claiming employment rights for that employee or for other employees, or participation in a lawful strike.

Unsuccessful applications

What are my rights regarding access to information if I am an unsuccessful job applicant?

Under the Privacy Act an unsuccessful applicant has the right to access personal information, which would include any notes written during the interview by a panel member. Best practice for interview panels includes:

- a standard set of questions is asked of all applicants
- standard work tests are conducted for all applicants
- the development of scoring templates set against objective criteria drawn from the job description

- the systematic use of templates by the panel members
- retention of all notes made by panel members until after the successful applicant starts work.

see also → **Privacy**

Volunteers

I work as a volunteer helper at the local hospital; am I covered by the Act?

Yes, the definition of employee in the Act is broader than the usual understanding of who is an employee and extends to cover unpaid workers.

Women-only

Can a women's gym employ only female staff?

Yes, if it can be established that the position needs to be held by one sex to preserve reasonable standards of privacy or if it is a genuine occupational qualification.

Work/life balance: **see** → **Flexibility**

Xenophobia

Can an employer specify that I have to have "New Zealand experience"?

No, unless an employer can objectively justify that it is essential for the job. Otherwise the requirement for New Zealand experience may well amount to indirect discrimination.

Can an employer refuse to employ me because I don't speak English with a New Zealand accent?

No, provided the job applicant can be clearly understood. A New Zealand accent is unlikely to be considered a genuine occupational qualification except in rare circumstances.

In November 2007 an Employment Tribunal in the UK found that an Indian-born British man who worked in a call centre had been discriminated against when he was dismissed because his accent "wasn't English enough".

see also → **Migrants**

Young people

How can an employer attract younger job applicants?

Traditional methods of job advertising like the situations vacant pages may not reach those aged 16–24 years. Young people are likely to find out about jobs from friends, school careers' advisers, community notice boards and internet websites.

In a recently developed resource the Upper Hutt City Council, www.uhcc.govt.nz, suggests that employers:

- ask young people working for them if they know of others interested
- contact careers' advisers at local schools
- ask young people which websites they use for job-hunting
- ensure applications are a helpful introduction to job-hunting for younger and less-experienced applicants
- make sure younger applicants are fully briefed about the job interview and the essential skills and competencies sought.

Can an employer reject a 17-year-old person on the basis of inexperience?

Yes, an employer can reject an applicant on the basis of inexperience if experience is a core competency for the job. No employee aged 16 or more can be rejected on the basis of age.

All new job applicants, regardless of age, need time to become familiar with their role. Good performance at work is not age dependent.

Zany dress: see → Appearance
and see also → Dress code

Zonked (slang, adjective meaning drugged):
see → Drug testing

EQUAL EMPLOYMENT OPPORTUNITIES AND PRE-EMPLOYMENT INFORMATION GATHERING

Developing a good employer policy and an Equal Employment Opportunities (EEO) programme in your organisation helps ensure that job advertising, short-listing, interviewing of candidates and selection policies are consistent, fair and non-discriminatory.

EEO practices and programmes are one way an employer can remove discriminatory employment practices. The implementation of workplace EEO policies can be effective in preventing unlawful discrimination under the Human Rights Act 1993. They may also provide a defence, for example in sexual harassment cases, against liability for an employer's discriminatory practices.

The Human Rights Commission has developed comprehensive good-employer guidance for both private and public-sector organisations. It is available on the NEON website at www.neon.org.nz

Recruitment, selection and induction comprise one of seven elements of the employment cycle that the Commission asks employers to consider when developing good-employer and EEO plans. Collecting data about the workforce is also supported as long as it is relevant to EEO.

Employers may wish to gather information regarding the race, ethnicity, gender or age of applicants for EEO purposes. An organisation may, for example, want to check whether applicants from diverse backgrounds have applied for a job. This will help provide evidence that they are advertising in the relevant media to attract the widest possible potential talent pool.

Where such information is required, it should be made clear to applicants that EEO information will not be used to discriminate against them. Employers should distinguish clearly between questions which will be used in job selection and questions put for EEO purposes. EEO information should be collected on a voluntary basis. Ideally, EEO questions should not appear on the application form but should be collected separately and anonymously.

The NEON website is a partnership network between the Commission and the EEO Trust and regularly posts newsletters, tools, advice and information for employers, employees and job seekers. You can register to receive the free newsletters with EmiliaS@hrc.co.nz or go to www.neon.org.nz

THE PROHIBITED GROUNDS OF DISCRIMINATION IN THE HUMAN RIGHTS ACT 1993

Section 21(1)

For the purposes of this Act, the prohibited grounds of discrimination are –

- (a) Sex, which includes pregnancy and childbirth
- (b) Marital status, which means being –
 - (i) Single; or
 - (ii) Married, in a civil union, or in a de facto relationship; or
 - (iii) The surviving spouse of a marriage or the surviving partner of a civil union or de facto relationship; or
 - (iv) Separated from a spouse or civil union partner; or
 - (v) A party to a marriage or civil union that is now dissolved, or to a de facto relationship that is now ended
- (c) Religious belief
- (d) Ethical belief, which means the lack of a religious belief, whether in respect of a particular religion or religions or all religions
- (e) Colour
- (f) Race
- (g) Ethnic or national origins, which includes nationality or citizenship
- (h) Disability, which means –
 - (i) Physical disability or impairment
 - (ii) Physical illness
 - (iii) Psychiatric illness
 - (iv) Intellectual or psychological disability or impairment
 - (v) Any other loss or abnormality of psychological, physiological, or anatomical structure or function
 - (vi) Reliance on a guide dog, wheelchair, or other remedial means

- (vii) The presence in the body of organisms capable of causing illness
- (i) Age, which means, –
 - (i) For the purposes of sections 22 to 41 and section 70 of this Act and in relation to any different treatment based on age that occurs in the period beginning with the 1st day of February 1994 and ending with the close of the 31st day of January 1999, any age commencing with the age of 16 years and ending with the date on which persons of the age of the person whose age is in issue qualify for national superannuation under section 7 of the New Zealand Superannuation and Retirement Income Act 2001 (irrespective of whether or not the particular person qualifies for national superannuation at that age or any other age)
 - (ii) For the purposes of sections 22 to 41 and section 70 of this Act and in relation to any different treatment based on age that occurs on or after the 1st day of February 1999, any age commencing with the age of 16 years
 - (iii) For the purposes of any other provision of Part 2 of this Act, any age commencing with the age of 16 years
- (j) Political opinion, which includes the lack of a particular political opinion or any political opinion
- (k) Employment status, which means –
 - (i) Being unemployed; or
 - (ii) Being a recipient of a benefit under the Social Security Act 1964 or an entitlement under the Injury Prevention, Rehabilitation, and Compensation Act 2001
- (l) Family status, which means –
 - (i) Having the responsibility for part-time care or full-time care of children or other dependants; or
 - (ii) Having no responsibility for the care of children or other dependants; or
 - (iii) Being married to, or being in a civil union or de facto relationship with, a particular person; or

- (iv) Being a relative of a particular person
- (m) Sexual orientation, which means a heterosexual, homosexual, lesbian, or bisexual orientation.

Section 21(2)

Each of the grounds specified in subsection (1) of this section is a prohibited ground of discrimination, for the purposes of this Act, if –

- (a) It pertains to a person or to a relative or associate of a person; and
- (b) It either –
 - (i) Currently exists or has in the past existed; or
 - (ii) Is suspected or assumed or believed to exist or to have existed by the person alleged to have discriminated.

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Disclaimer

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