

WE KNOW
**HUMAN
RESOURCES**

a guide for employers

PRE-EMPLOYMENT
GUIDELINES

THE ENGAGEMENT PROCESS

Employing staff now requires more attention to the process than ever before. Therefore, you as an employer need to plan and manage the engagement effectively.

This guide should be read in conjunction with the Human Rights Act 1993 and the Employment Relations Act.

1. **The Human Rights Act 1993** directly impacts on the area of employing staff. The purpose of the Act in this regard is to make sure that the employer does not discriminate unlawfully on any of the prohibited grounds against some applicants when selecting an employee.

The **Prohibited Grounds** are given full description later in this document but are listed below:

1. Sex
2. Marital Status
3. Religious Belief
4. Ethical Belief
5. Colour
6. Race
7. National or Ethnic Origin
8. Disability
9. Age
10. Political Opinion
11. Employment Status
12. Sexual Orientation
13. Family Status¹

Unlawful Discrimination occurs when a person is treated in a less favorable manner than another person in the same or similar circumstances under any of the grounds mentioned above.

There are two types of discrimination **direct** or **indirect**.

Direct Discrimination occurs when the reason for not offering a person a job is based on one of the prohibited grounds.

Indirect Discrimination occurs when a condition or requirement of the position on offer is imposed which effectively excludes applicants on one of the prohibited grounds.

All of the prohibited grounds stretch as far as the applicant's family. For example it is unlawful to decline to employ an applicant because their relative held a particular religious belief.

You as the employer are **liable** for any unlawful discrimination in the workplace, whether it is committed by one of your employees or you yourself.

Liability can be avoided if you can prove that you have taken all the practicable steps to either prevent the unlawful discrimination or that the employee who committed the offense did so without your authority.

There are limited **exceptions** to the prohibited grounds. These exceptions include:

- Genuine Occupational Qualification – Example being a female model to model women's clothes will not breach ground 1.

¹ Imposed as a prohibited ground of discrimination by s104 Employment Relations Act 2000.

- Unreasonable Disruption – If accommodating the applicant would create an unreasonable disruption. E.g. employing a female when only male facilities exist.

Advertising has been the focus of many proceedings brought to the Human Rights Commission. The general rule is that it is unlawful to advertise a position in a manner that could reasonably be understood as indicating that there exists an intention to discriminate on one of the prohibited grounds. E.g. Young Person Required.

In the light of the Human Rights Act 1993, employers should review their **application forms** and **interview procedures**.

The focus of the Human Rights Act is to remove preconceived myths and ideas about an individual's ability based on a category to which they may or may not belong. Instead the Act directs focus to be placed on the individuals own skills, experience, qualifications, performance and true ability to perform the tasks of the job.

The legislation does not require an employer to employ someone that is not able to perform the job but simply prevents an employer from unlawfully refusing to employ someone that can.

Application forms need to ask only that information that will show the applicants ability to perform the job, not irrelevant information that could be the basis for discrimination. A further point to note regarding application forms is that any information that is only needed post-employment should be left out leaving remaining in the form only information that is purely necessary for the selection of the best person to fill the position.

A helpful question to ask yourself when reviewing your application form is "Is the question relevant to show the person's ability to perform the job?" Always be prepared to justify yourself, remember the onus of proof is on you!

Attached is a draft of an application form that would comply with the Human Rights Act 1993, feel free to adapt it to fit your requirements.

As every position has different requirement the use of a "**blanket**" form to cover all situations should be avoided as it won't really be able to inquire about the ability of the applicant to perform all of the duties of the job and nothing else. The attached form is designed solely to give a guide to you of the type of questions permissible and to provide you with the mix necessary to gain the information that you require without breaching the grounds of unlawful discrimination.

Job Descriptions are required to be included in Individual Employment Agreements and are helpful tools for a number of reasons. In the pre-employment situation, they are helpful in determining the real requirements of the position and help in making the correct selection for the correct reasons. Similarly, they provide a real picture of the requirements of the position to the applicant.

When designing a job description, it is important to remain aware of the dangers of indirect discrimination, and thus avoid the creation of unlawful barriers to employment. In such a document you are free to set out all of the requirements of the position including issues such as, shift work, overtime, job availability, holidays, closedown periods etc etc.

As with the application process, the **interview process** is an area that needs to be properly conducted to ensure that the Human Rights Act is not breached.

Things to avoid in an interview:

- Sexist language
- Attempted humour at matters related to prohibited grounds.
- Focus on the applicant rather than their abilities etc.
- Hesitance in the face of disability, ethnicity or sex differences.
- Reference to childcare or other family commitments.

Expand on the position on offer, referring to the job description, to ascertain whether the person has the ability to work the hours or dates required. It is important to use:

- Open ended questions.
- Being non-judgmental.
- Hold the meeting in a neutral environment.
- Be prepared to explain why certain information is sought.
- Use the same procedure for all the applicants.
- Listen positively.

If you have concerns about an applicant's availability for work, provide them and explain to them a schedule of work, then ask if they would have any difficulties with the schedule. Keep in mind that you have a responsibility to make reasonable accommodations.

Declining employment may be seen as the end to the process but in closing, you can easily make an error. Remember, if it can reasonably be understood to indicate an intention to discriminate on one of the prohibited grounds!

Where a person has been unsuccessful, do not wait for them to inquire "why" they missed out. Instead we recommend a letter in the usual form (below). Many times employers who have been trying to let someone down gently on their non-appointment have inadvertently given rise to a claim that the Act has been breached. If any inquiries are made, ensure that only the person whom made the decisions provides the responses.

SAMPLE UNSUCCESSFUL LETTER

Dear _____,

Thank you for your application for the position of _____. Unfortunately on this occasion it was unsuccessful.

We would like to take this opportunity to wish you every success in your future endeavours.

Yours faithfully,

Any decision about **returning CV's** needs to be made with the knowledge that an unsuccessful applicant can lodge a claim within 12 months of their non-appointment and such documentation may be necessary to refute any allegations.

Typically an employer would return or destroy unsuccessful applicants CVs, however, the applicants should ideally make the decision themselves. This is a difficult area so feel free to contact one of the employers' services team at the Chamber for further advice.

INTERVIEW CHECKLIST

Preparation:

- Keep your objective in mind so you know what you're looking for.
- Prepare a Job Description. This can explain the relevance of asking particular questions.
- Tailor the application form to suit the individual position.
- Have a draft employment agreement for the applicant to view.
- Have a complete selection of relevant policies for the applicant to view (these may be contained in the "house rules").

Introductions:

- Introduce yourself and all those present.
- Put the applicant at ease, build rapport.
- Gain the applicants trust.
- Detail the steps that the interview will follow.
- Advise the applicant that they will have an opportunity to put forward any questions they have later in the interview.
- Explain the requirements of the position.

Atmosphere:

- Conducive to the free flow of information.
- Encourage questions.
- Avoid domination or interrogation.
- Ensure that the room is atmospherically and physically comfortable. This may mean that other employees are not peering through the windows at the applicant.

Conduct of Interview:

- Follow a logical and systematic approach to prepare guidelines.
- Encourage questions.
- Listen actively.
- Adjust the tempo of the interview to suit the applicant.
- Allow time for the development of concepts etc.
- Explain the job description and policies.

Questioning:

- Avoid leading questions.
- Avoid asking questions that will result in "Yes/No" responses.
- Keep questions simple, concise and clearly worded.
- Guide the applicant through the questions.
- Follow up leads given.
- Ask all the applicants the same questions.

Distorting Factors:

- Halo effect – Concentration on one positive characteristic of the applicant and disregarding negative aspects.
- Stereotyping – Fitting a person into a category and judging them on that category.
- Association – Concentration on characteristics that the applicant and the interviewer have in common (just-like-me effect).
- Comparisons – Be careful not to judge one applicant too highly because the previous applicant was so poor (or vice versa).
- Inconsistency – The same questions need to be asked of applicants, so as to correctly rank them. Also don't let other aspects influence how you behave in the interview. For example, the last interview of the day may be treated more jovially than the first, or the one after lunch.

APPLICATION FORM

Attached is an application for employment form that you are requested to personally complete.

The application form is a source of information that the Company will use to assist it in considering your suitability for the position for which you are applying. If successful, such information will form part of the Company's personnel records. Failure to supply the required information will prejudice the Company's ability to determine your suitability for the position.

Any offer of employment is made subject to your completing the Company pre-employment medical to its satisfaction.

You are entitled to access this information upon request to the Company's Privacy Officer where the information is held.

This location is currently: _____

Provided that the Company shall retain any information relating to unsuccessful applicants for a period of 12-months. The above information is provided in accordance with the Privacy Act 1993.

The following application form example contains commentary for your information. This commentary need not be included in any application form that you use.

CONFIDENTIAL

To be completed by applicant personally.

Date of application: __/__/____.

Application for Employment.

The completion of this form does not indicate that there is any obligation on the Company to engage the applicant.

Purpose.

This information is collected for the purpose of assessing your suitability for employment at _____, which may include subsequent changes in employment with the Company.

Position Applied For: _____

Your Name:

Preferred name: _____

Surname: _____

Christian Names: _____

Are you known by any other names? _____

If so, What are they? _____

Your Contact Details:

Contact Address: _____

Home Phone Number: _____ Other: _____

Work Status:

Have you reached the current school leaving age? Yes/No

We need not establish the applicant's exact age, as it has no bearing on their ability to perform the duties of the position.

Are you legally entitled to work in New Zealand? Yes/No

This does not offend the Human Rights Act but needs to be asked of every applicant. It will become even more important if the proposed "International Organised Crime Bill is successful.

Questions regarding nationality are not sought, as they have no bearing on the applicant's ability to perform the duties of the position.

Education:

Name of last education provider: _____

Qualifications earned: _____

Can you speak any other language? _____

Apprenticeship:

Trades position only.

Do you have your apprenticeship papers? Yes/No

In what trade were you apprenticed? _____

What was the name and address of the employer? _____

What trade qualifications do you hold? _____

Qualifications:

Do you have any other qualifications, certificates, licenses etc?

Please describe the skills that you have which are relevant to the position.

Employment History:

Present or most recent employer details:

Company: _____

Address: _____

Job Held: _____

Main Duties: _____

Number of hours worked per week: _____

Length of Service: _____

Reason for leaving: _____

Do you consent to the Company contacting your present or most recent employer for the purposes of reference checking? Yes/No

You need to obtain this permission, preferably in writing, to comply with the Human Rights Act 1993.

Next most recent employer:

Company: _____

Address: _____

Job Held: _____

Main Duties: _____

Number of hours worked per week: _____

Length of Service: _____

Reason for leaving: _____

Do you consent to the Company contacting your next most recent employer for the purposes of reference checking? Yes/No

Next most recent employer:

Company: _____

Address: _____

Job Held: _____

Main Duties: _____

Number of hours worked per week: _____

Length of Service: _____

Reason for leaving: _____

Do you consent to the Company contacting your next most recent employer for the purposes of reference checking? Yes/No

Next most recent employer:

Company: _____

Address: _____

Job Held: _____

Main Duties: _____

Number of hours worked per week: _____

Length of Service: _____

Reason for leaving: _____

Do you consent to the Company contacting your next most recent employer for the purposes of reference checking? Yes/No

Please give details of any other job that may be relevant.

Have you ever worked for this Company or an associated company before? Yes/No

If Yes, where and when? _____

Do you have secondary employment? Yes/No

If yes, please detail: _____

Referees:

Please give the name, address and telephone numbers of at least two referees.

| | |
|-------|-------|
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |

Sample Only

If your application were successful, when could you commence employment?

___/___/___

I consent to the Company seeking verbal or written information on a confidential basis about me from representatives of my previous employers and/or referees and authorise the information sought to be released by them to the Company for the purposes of ascertaining my suitability for the position I am applying for. I understand that the information received by the Company is supplied in confidence as evaluative information, and as such will not be disclosed to me.

Signed: _____

Date: ___/___/___

This is necessary for compliance with the Privacy Act 1993.

General:

This does not breach the Human Rights Act, but should be deleted if irrelevant to the position.

Are you available to work the hours outlined in the Job Description? Yes/No

Are you prepared to work shifts if required? Yes/No

Have you worked shifts before? Yes/No

Are you prepared to work overtime if required? Yes/No

Have you been convicted of a criminal offence? Yes/No

Are you awaiting the hearing of charges in a civil or criminal court? Yes/No

Are you prepared to handle all products, materials and equipment used in the industry? Yes/No

Do you have a current driver's license? Yes/No

If yes, what class? _____

Drivers' License Number: _____

Do you have any demerit points? Yes/No

If yes, please detail: _____.

Do you have a spouse, partner, relative or household member working here or elsewhere in the industry? Yes/No

If yes, Who and Where? _____

What transport arrangements do you have to attend your place of employment?

Medical:

If you are offered employment, the offer is made subject to your obtaining a full medical clearance following the completion of our pre-employment medical.

Do you agree to undergo a medical examination? Yes/No

Do you consent to any occupational health monitoring if applicable to the job? Yes/No

Have you had any injury or medical condition caused by gradual process, disease or infection for example hearing loss, sensitivity to chemicals, occupational overuse syndrome that may be aggravated or further contributed to by the tasks of the position? Yes/No

If yes, please specify: _____

If yes, what was your last date of treatment for (each of) the injury(s) or illness(es)? ____/____/____
____/____/____.



Do you consent to the Company retaining the information contained in this application form for the purposes of considering your suitability for any other position that may arise with this Company in the future?

Yes/No

This is optional, but should be used if you are going to use the information for any purpose other than that for which it was obtained (i.e. another position). This is required by the Privacy Act 1993.

I consent to _____, or their representative, seeking information on a confidential basis about me from the New Zealand Police, or any foreign police authorities. The information sought is to be released to them for the purposes of ascertaining my suitability for the position for which I am applying. I understand that this information is to be treated as "evaluative material" and thus I have no claim for access to it. This consent is valid for two (2) months from the date shown below.

Signed by me this ____ day of _____, 20__.



Declaration:

_____ (full name) declare that to the best of my knowledge the answers in this application for employment form are correct and I understand that if any false or deliberately misleading information is given, or any material fact suppressed, I will not be accepted, or if I am employed, my employment will be terminated. I further understand that any offer of employment if made is conditional

Name of referee.

Comments: _____

Re-employ?

Yes/No

PRE-EMPLOYMENT MEDICAL

Not to be included in neither the application for employment nor the interview process. It is to be used following an offer of employment subject to the employer being satisfied that the prospective employee is mentally and physically capable of performing the duties of the position.

The Health and Safety in Employment Act requires the employer to identify hazards and to provide a safe place of work. A person's medical, physical and now mental state may pose a hazard for that staff member and other staff, so that a pre-employment medical may be considered necessary to identify these hazards. Similarly, the pre-employment medical may be necessary in order for you the employer to be satisfied that the individual can physically and mentally carry out the duties of the position.

The pre-employment medical can be dealt with in two ways:

1. By the applicant completing a questionnaire, or,
2. By the applicant attending a doctor for a full medical, which may or may not include a questionnaire.

It is important that any questions asked of the individual relate specifically to a task or function of the position and the known risks that are associated with those tasks or functions and that there exists a need to know the information viz. occupational safety and health etc. As different jobs may require different questions, a standard questionnaire is not advisable. Therefore a pre-employment medical questionnaire should be discussed and created to suit the individual duties of the position.

Where a doctor is to be used in the pre-employment medical process, they should be included in the creation of a relevant format with regard to the duties of the position.

The following types of questions may be useful when designing your questionnaire, but are provided as examples only, and should be used in conjunction with a medical examination.

Are you allergic to, or have any sensitivity to any substances or chemicals. Yes/No

Do you require corrective lenses or contact lenses? Yes/No

Do you have a hearing disability? Yes/No

Have you ever suffered from a back injury? Yes/No

If yes, please detail, giving the date when you last sought treatment:

Have you suffered or are you suffering from any injury or medical condition caused by gradual process, disease or infection, for example, occupational overuse syndrome, hearing loss? If yes, please detail, giving the date when you last sought treatment:

Have you claimed accident compensation in the last 12 months? (Give details)

State any serious injury you have suffered that any affect your ability to effectively carry out the duties of this position: _____

Do you have any other known conditions that may affect your ability to effectively carry out the duties of this position? Yes/No

Please specify: _____

In your past employment:

Have you ever been exposed to:

Noise? Yes/No

Asbestos? Yes/No

Heavy metals? Yes/No

Solvents? Yes/No

Skin irritants? Yes/No

Infectious material? Yes/No

If yes to any of above, please specify: _____

This is an optional provision that need only be included where there is a chance that the applicant may be exposed to these hazards in the position applied for.

The issue of the Privacy Act 1993 must also be allowed for in relation to a pre-employment medical, as you want access to the results of the tests and questions.

The person should therefore complete the following:

I consent to the Company having access to and using the information arising from my pre-employment medical for the purposes of confirming or declining my conditional offer of employment and authorise the information to be released to the Company.

Signed _____

Date ____/____/____