

A-Z Guide

Pre-Employment checks



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Overview

1. Pre-employment checks are made to confirm that an applicant is suited to the position offered.
2. Simple background checks can reduce the costs and risks to an employer.
3. It is important to perform pre-employment checks which are relevant to the job role.
4. Irrelevant checks may serve an indirect relevance however it is important to identify where they may be considered discriminatory.

Introduction

Pre-employment checks are fundamental for the purposes of identifying applicants capable and suitable for the requirements of a position. It also enhances the due diligence of the hiring process. Simple background checks can enable an employer to invest time and money in the right applicants and avoid serious issues of fraud performance issues such as absenteeism, high employee turnover and heading towards disciplinary action.

In choosing which pre-employment checks may be relevant to you it is important to place some thought in this process as certain checks may not serve a direct significance however it may provide relevance indirectly. For instance criminal check may disclose prohibited entry to certain countries or alias names of applicant even though the position may not initially recognise any links. This piece of information may be valuable where an employee's position requires international travelling for instance.

However it is vital to note when conducting pre-employment checks that they are not discriminatory either directly or indirectly. It is important that these checks are not testing skills and suitability which are not required for the job. For instance a job offer made subject to passing a medical examination can be discriminatory and invasion of privacy as opposed to passing a medical examination based on fitness for work applied.

The following pages provide information about accessing various records which include:

- Criminal Records
- Drug Testing
- Medical Checks
- Credit Records
- Drivers Check
- Reference Checks

Conditional offers of employment

It is often the case that the results of pre-employment checks will not be received until weeks after the applicant is tested. However, the company may need to fill the advertised position quickly and therefore the applicant is permitted to commence working.

It is important to outline in both the letter of offer and the employee's employment agreement that the offer of employment is conditional on satisfactory test results.

It is important that the condition to be "passed" is made clear to the applicant. If the intention is that the applicant meets a required level or that there are issues, this must be clearly stated in the condition.

If all that is required is that the applicant completes a "satisfactory" result then it may be arguable that the employment agreement is capable of acceptance once the applicant has been examined or tested; the outcome of that examination or test may not be relevant to the passing of the condition.



What amounts to an acceptable result will depend on the test, the nature of the role the applicant is applying for and the organisations values.

When the conditional offer of employment is made to the applicant, the applicant should be advised what will happen if the results are not acceptable – usually the employer will commence disciplinary action against the employee.

Privacy Act 2020

As with the collection of all private information, the principles outlined in the Privacy Act 2020 are relevant to an employer's access to, collection of, use of and storage of an applicant's private information.

Of particular relevance, are principles 1, 2, and 10. Principle 1 relates to the collection of personal information. Personal information should not be collected without unless the collection is necessary and is being collected for a lawful purpose connected with a function of the employer.

Under Principle 2, private information should be collected from the individual unless the individual concerned authorises collection of the information from someone else. To comply with this principle, it is important to obtain the employee's written consent to the pre-employment checks and/or tests on your applications for employment.

Principle 10 of the Privacy Act refers to the use of the information that has been collected. If the information has been collected for one purpose (for example a credit check because the employee with responsible for handling cash) that information cannot be used for another purpose (for example approval of a personal loan for the employee from the employer) unless the employee consents.

Refer to the **A-Z Guide** to the **Privacy Act** for more information.

Criminal checks

A Criminal Record arises from a conviction and is held by the Ministry of Justice. It can be beneficial to obtain a criminal record summary from the Ministry of Justice to identify past convictions that may impact an applicant's ability to do the position that they have applied for.

An applicant does not need to disclose criminal records where the Clean Slate Act applies. The Clean Slate scheme will enable individuals to conceal convictions in most circumstances of minor convictions however there are some exceptions. To find out more about the Clean Slate scheme please see the **A-Z of Employing Guide** on the **Criminal Record (Clean Slate) Act**.
Request for copy of records

Written consent is required to access information about an applicant's criminal record. To obtain a copy of records you will need to file an application with the Ministry of Justice. You can find this application form on the Ministry of Justice website.

Drug testing

Pre-employment drug testing can be carried out but only with the applicants consent. It is important to have a drug and alcohol policy in place that provides for pre-employment drug testing and what will happen if the test result is unsatisfactory.

Quite often, the testing will not be completed until after a conditional offer has been made as drug testing can be costly. However this may result in the employee commencing employment in the interim. The impact of this may be that you may be required to comply with any rehabilitation provisions in your drug and alcohol policy despite the employee having only been employed for a short while. This can be both costly and time consuming. More information about drug testing can be found in the **A-Z Guide to Drug Testing**.



Medical checks

Pre-employment medical examinations may be completed as part of an application process to provide information that is used for screening purposes. In this situation, in most instances, a requisite level of fitness and/or a prescribed level of health (often including being free of cardiac and respiratory diseases) must be met by the applicants before their applications can be progressed any further.

As a rule, there are very few pre-employment situations where it is necessary to conduct a medical examination. Generally pre-employment medical examinations are appropriate and lawful only where international regulations require a prescribed level of fitness (for example, airline pilots) or international standards have normalised a fitness level (for example, police officers).

Refer to the **A-Z Guide to Medical Examinations** for more information.

Credit checks

Credits checks are beneficial for screening positions where applicants may be managing a budget, handling cash or valuables, or using company credit cards. The information provided includes judgements, bankruptcies, defaults, public notices and directorships. Credit reporters must be provided with authorisation of the individual to grant access this information before disclosure of information.

It is important that the collection of credit history information is relevant to the role that the applicant is applying for. *In Case note 222306 [2012] NZ PrivCmr 4* an applicant complained to the Privacy Commissioner because she was asked to consent to a credit check for a retail position. The Privacy Commissioner did not think that it was necessary for a credit check to be carried out for the position of a part-time retail assistant. Under the Credit Reporting Privacy Code 2004 employers can only access credit information where a job involves significant financial risk to the employer. The Privacy Commissioner did not consider that a part-time retail assistant job posed such a risk

There are a number of organisations that can provide an employer with an applicant's credit history if an employer wishes to obtain this information.

Drivers' licence checks

You can check whether someone has a valid drivers' licence through the New Zealand Transport Agency (NZTA) scheme of Driver Check. The Police can impound any vehicle being driven by someone who has been disqualified or suspended from driving, or who has been forbidden to drive. Companies therefore need to be able to check the validity of their employees' driver licences before allowing them to drive a company vehicle. Driver Check lets you check a driver's licence class and status details quickly and easily.

You can make enquiries about the licence status of a driver in your firm — what licence classes and endorsements they hold, whether there are any conditions on their licence, and the status of their licence (e.g. whether a driver has been disqualified or suspended from driving, if their licence has been revoked or has expired). You can also maintain and view your own company list of drivers — adding new drivers and removing any drivers that are no longer associated with your firm.

Certificate of Particulars

If you need to prove you're a licenced driver you can request a Certificate of Particulars. The Certificate will be emailed, faxed or mailed to you, and outlines what classes of driver licence you hold, the issue date of the licence, whether your licence is current and so on.



How to apply:

By phone: 0800 822 422, (or from overseas +64 6 953 6200) Monday to Friday, between 8am and 6pm; or
In writing:

The NZ Transport Agency
Business Administration Team
Private Bag 117777
Palmerston North 4422
New Zealand

Ideally you should provide your driver licence number, but if you've lost your licence this may not be possible. You will also need to provide the licence holders full name, date of birth and the address you think is on the licence, a contact phone number and the postal or email address for the certificate to be sent to and the payment of any fees.

Reference checks

Reference checking is an extremely important step in the selection process. You are looking for confirmation that the applicant is capable of the position for which they have applied and have a track record of success in the same or similar positions, and that they have been a valuable and reliable employee.

This is one step that should not be delegated or contracted out. You need to ascertain for yourself as the prospective employer that the referee was satisfied with the applicant's performance, that that performance was recent and relevant, and that the applicant has been honest about the information they have provided in relation to that former employment.

Refer to the **A-Z Guides to References** and **Privacy**.

Qualifications checks

Depending on the circumstances, the term "qualification" can mean a variety of different things; it can refer to a formal diploma or degree obtained from an academic institution, or it can refer to a certificate that entitles the bearer to practice in a particular field of employment or work. In some circumstances a required qualification may be merely a licence to drive a motor vehicle.

All representations made by applicants in respect of qualifications should be verified before employing or hiring the person who makes those representations. While the law provides for remedies for misrepresentation, it is easier, legally and practically, to verify an applicant's representations in respect of qualifications before entering into a contractual relationship.

An applicant should not be permitted to commence employment in a role where a specific qualification is necessary before the qualification has been verified.

Verification of an applicant's qualification can be completed in many ways. You may require the applicant to provide an original or certified copy of the original proof of the qualification. Alternatively, you could seek to verify the qualification with the issuing body however the employees' consent to this would be required.

More information about qualifications can be found in the **A-Z Guide to Qualifications**.



Immigration checks

The Immigration Act 2009 does not specifically require employers to inquire about the immigration status of their prospective employees, but it implies that they should. The reason for this is that the Act states that where you employ a person knowing that the person is not entitled to work in New Zealand you commit an offence against the Act.

Employers should require proof of eligibility to work from prospective employees, such as a passport, birth certificate, or visa. A best practice guide for helping employers check work entitlements, and an online employer enquiry system is available [here](#).

Refer to the **A-Z Guide to Immigration** for more information.

Conclusion

Simple background checks can enable an employer to invest time and money in the right applicants and avoid serious issues of fraud performance issues such as absenteeism, high employee turnover and heading towards disciplinary action. Although pre-employment checks can take time and cost money, they are an invaluable way of verifying that an applicant is capable of completing the advertised role and suitable fit within your business.

Remember

- Always call AdviceLine to check you have the latest guide
- Never hesitate to ask AdviceLine for help in interpreting and applying this guide to your fact situation.
- Use our AdviceLine employment advisors as a sounding board to test your views.
- Get one of our consultants to draft an agreement template that's tailor-made for your business.

This guide is not comprehensive and should not be used as a substitute for professional advice.

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