

## A-Z Guide

# HUMAN RIGHTS



## Contents

Contents	1
Use This Guide to Understand	2
What Are Human Rights?	2
Unlawful Discrimination	3
The Human Rights Commission	8
Human Rights Review Tribunal	9
Disputes Resolution Services	10
For Your Business	11



# Use This Guide to Understand

- Human rights in New Zealand are protected by the Human Rights Act 1993 and the New Zealand Bill of Rights Act 1990.
- The Human Rights Act 1993 prohibits discrimination in most public and private aspects of life on thirteen grounds. It applies to acts done by the Government of New Zealand and any other public body authorised by law to make decisions in respect of people.
- The Human Rights Commission is a specialist public body; its functions are to promote and protect the human rights of individuals and groups.
- The Commission provides a dispute resolution service that is able to provide information, advice and mediation to help people resolve human rights issues.
- The Human Rights Review Tribunal, which is part of the Commission but administered by the Department for Courts, is empowered by the Act to decide civil proceedings taken in respect of claims of unlawful discrimination.
- In some instances, a person or group or the Commission may be represented before the Tribunal by the Director of Human Rights Proceedings, particularly if there is an issue of some importance to the public interest at stake.
- Claims of sexual harassment, racial harassment, and discrimination in employment may be taken against an employer under either the Human Rights Act 1993 or the Employment Relations Act 2000; an employee must decide between the two options.

## What are human rights?

Human rights are those rights we frequently speak about as guaranteed to everyone, or all New Zealanders, depending on the scope of the discussion. They are protected by both international law and domestic laws.

In New Zealand, two domestic laws protect human rights – the New Zealand Bill of Rights Act 1990 protects the rights of individuals against acts done by either the Government of New Zealand or, any person or body in the performance of any public function pursuant to law, and the Human Rights Act 1993 protects individuals from unlawful discrimination in most aspects of life.

The New Zealand Bill of Rights Act 1990 is not covered in this A-Z Guide as it will rarely impact on the relationship between an employer organisation and its employees.

New Zealand has had specialist human rights legislation since 1977, and race relations legislation since 1971, and a Human Rights Commission (under consecutive Acts) since 1978. The current Act has been amended from time to time and significantly in 2001 when the Human Rights Commission was reorganised and its dispute resolution processes dramatically changed. At that time the provisions of the Act were extended to cover the Government and the public sector.

This A-Z Guide sets out the structures provided for under the Human Rights Act 1993 for the promotion and protection of human rights in New Zealand. As well as explaining how those structures work, the guide aims to refer you to other A-Z Guides that may be useful in understanding the obligations this Act places on you as an employer in New Zealand.



# Unlawful discrimination

## Who can bring a discrimination claim?

The Human Rights Act 1993 is enforceable by people other than the complainant (the person who was discriminated against) and is enforceable against individuals and bodies of any kind for direct and indirect discrimination that is prohibited by the Act.

Indirect discrimination is any conduct, practice, requirement or condition that has the effect of treating a person or a group of people differently on one of the prohibited grounds of discrimination, but which has not been directly outlawed under the Part of the Act that deals with unlawful discrimination.

Generally speaking, any interested party may make a complaint of unlawful discrimination that it claims has been done by any person or anybody to any person or people, to the Commission. In the Act, and throughout the rest of this guide, the term “complainant” refers to the person who has been discriminated against, and the term “aggrieved person” refers to a person who is not the complainant but who has laid a complaint of unlawful discrimination with the Commission.

In some instances, the Act prescribes procedures that can only apply to employers and employees and anticipates in those instances the complainant as the employee. The Employment Relations Act 2000 also contains a provision in respect of discrimination in employment, but this is only relevant to persons who fit the definition of “employee” provided in that Act.

## Who can a claim be made against?

The Human Rights Act 1993 renders it unlawful, subject to the exceptions provided for in the Act, for individuals or groups of people to be discriminated against by:

- The legislative, executive, or judicial branch of the Government of New Zealand; or
- A person or body in the performance of any public function, power, or duty conferred or imposed on that person or body by or pursuant to law; or
- Employers (includes employers of contractors and unpaid workers); or
- Partnerships; or
- Industrial and professional associations, qualifying bodies, and vocational training bodies;
- Any person restricting access by the public to public places, vehicles and facilities; or
- Any person who provides goods and services to the public; or
- Any person who provides land, housing, and other accommodation to any other person; or
- An educational establishment;
- If it pertains to a person or a relative or associate of a person, and it either currently exists, has existed in the past, or is suspected, assumed or believed to exist or to have existed by the person being discriminated against.

## What are the grounds for unlawful discrimination?

The Human Rights Act sets out 13 grounds on which discrimination is prohibited. Exceptions apply in limited circumstances. A complaint of unlawful discrimination may be made if one or more of the prohibited grounds of discrimination currently applies or did so in the past, or if a person suspected, assumed or believed this to be the case (for example, if employment is refused



## Human Rights

---

because the employer thought that, or knew that, a job applicant, or the spouse of a job applicant, was once a member of a particular political party).

The grounds, and exceptions, which relate to particular grounds, are:



### Sex, including pregnancy and childbirth

“Sex” in this context relates to being male or female (which includes pregnancy and childbirth). The prohibition in relation to pregnancy and childbirth operates additionally to rights provided by the Parental Leave and Employment Protection Act 1987. The specific reference to pregnancy and childbirth reinforces the Parental Leave and Employment Protection Act, which provides that an employee may not be dismissed because they are pregnant. Even in situations where an employee is not entitled to parental leave, an employer may not, on grounds of pregnancy or childbirth, refuse employment, terminate employment, or treat an employee differently from others similarly employed. By contrast, preferential treatment because of pregnancy and childbirth is lawful and not a breach of the Act.

### Marital status

Which includes being single, married, in a civil union, in a de facto relationship, separated from a spouse or civil union partner, a party to a marriage or civil union now dissolved or a de facto relationship now ended, or widowed.

### Religious belief

Employers must accommodate any practice which employees who hold a particular religious or ethical belief are required to follow, as long as the employer’s activities are not unreasonably disrupted as a consequence. “Unreasonable disruption” is not defined. Some employees may be unable to work on particular days of the week, in the same way that some rugby players are not available to play on Sundays.

### Ethical belief

Meaning the lack of a religious belief, in respect to a particular religion or religions, or all religions. The requirement to accommodate particular religious practices applies equally to ethical belief.

### Colour/Race/Ethnic or national origins, including nationality or citizenship

As well as genetic and biological characteristics, includes the wider context of what historical identity in terms of colour, race or national or ethnic origins that a person identifies with.

### Disability

Meaning physical disability or impairment, physical illness, psychiatric illness, intellectual or psychological disability or impairment, any other loss or abnormality of psychological, physiological or anatomical structure or function, reliance on a guide dog, wheelchair or other remedial means and the presence in the body of organisms capable of causing illness (for example, the HIV virus).

However, no one with a disability must be employed or promoted if they could only satisfactorily perform the job with the aid of special services or facilities, and it is not reasonable to expect the employer to provide these.

Similarly, employment may be refused to someone who, because of the environment in which the work is to be carried out, could only perform the duties involved with risk of harm either to himself or herself, or to others.

Risk of harm includes the risk of infecting other persons with an illness when it is not reasonable to take that risk. However, an employer may not refuse employment or promotion if, without unreasonable disruption, reasonable measures can be taken to reduce the risk to a normal level. In the event of a complaint, it will be for the employer to establish what is or is not reasonable. For example, in a food handling situation it may be reasonable, and necessary, to refuse employment to a known hepatitis carrier.

Terms of employment or conditions of work may be set or varied after taking into account any special limitations that a disability places on capacity to perform a job. Special services or facilities may be provided to enable work to be carried out.



**Age**

Meaning different treatment of anyone over the age of 16 years. Since 1 February 1999, employers have been unable to require employees to retire at a particular age as this is unlawful discrimination on the basis of age. Whether or not an employee's services are retained will depend on their ability to perform the job or on agreement to a retirement date. While there may be an agreement prior to that date regarding retirement ages, that agreement will not be enforceable if the employee decides at a later time they do not wish to retire. Where a dispute regarding retirement arises between employers and employees, the issues to be resolved will be the ability and competence of the employee to perform the job.



## Human Rights

It is not unlawful to refuse employment or to retire an employee, where being of a particular age or in a particular age group is a genuine occupational qualification for the position or employment in question - for reasons of safety or for any other reason. For example, it is probably permissible to employ a younger person as a presenter of a television programme for young people, where the intention is to have someone relatively close in age to the target group.

An employer may in some circumstances pay an employee under 18 years of age a lesser amount than that paid to someone 18 years or over who does the same or similar work. The Minimum Wage Act provides for a starting-out wage for a period of time for employees aged 16 or 17. The adult minimum rate applies to those employees aged 16 and over, except those on the starting-out wage or trainees in apprenticeship type training.

### Political opinion

Including the lack of a particular political opinion or having no political opinion. However, political advisers to members of parliament, to local authorities, or to parliamentary or local authority election candidates, MPs' secretaries and members of the staff of a political party may all be selected (or rejected) for employment on the basis of their political opinion.

### Employment status

Meaning being unemployed or receiving any kind of social security benefit or accident compensation.

### Family status

Meaning having responsibility for the part-time or full-time care of children and other dependants, having no responsibility for the care of children or dependants, being married to, or in a relationship in the nature of marriage with, a particular person, or being related to a particular person. A "relative" is anyone related by blood, marriage, affinity, or adoption to, or wholly dependent on, the person, or who lives in the person's household.

It is not a breach of the Act to give special treatment to employees who have responsibility for the full or part-time care of children or other dependants, for example, by providing childcare facilities, or allowing time to telephone to check on the condition of a sick child. An employer need not employ anyone married to, or living in a relationship in the nature of marriage with, an existing employee, or related to an existing employee, if there would be a reporting relationship between the two, or a risk of collusion to the employer's detriment.

Where there is a risk of collusion to the employer's detriment, employment may also be refused to the relative, spouse or partner of someone employed by another employer.

### Sexual orientation

Meaning heterosexual, homosexual, lesbian or bisexual orientation. The Act provides for other forms of discrimination that may occur; they are:

- Racial disharmony
- Sexual harassment
- Adverse treatment in relation to people affected by family violence
- Racial harassment
- Victimisation

The exceptions are vast and complicated; what may be unlawful discrimination in some circumstances may be lawful conduct in others. Refer to the **A-Z Guides on Discrimination in Employment and Disability** for more information.

## What exceptions exist?



## Human Rights

---

As well as the exceptions referred to above, relating to a particular ground of discrimination, there are others that relate to more than one ground. Two grounds, colour and employment status, have no exceptions.

However, the general exception of genuine occupational qualification might apply in a particular case (for example, choosing a Black actor over a white actor to play a Black role would be permissible). The onus of proving that any exception applies is always on the employer. Exceptions that relate to more than one category of discrimination are:





## Human Rights

---

### Accommodation

Employees may be appointed because they are either male or female when the nature or location of the employment makes it impracticable to live anywhere other than in premises provided by the employer, and the only premises available do not have separate sleeping accommodation. Where more than one person is employed, and it is not reasonable either to install separate accommodation or to provide separate premises, the employer's decision to employ only persons of the same sex will not be unlawful.

Employers do not breach the Act if, on the basis of someone's sex or marital status, they do not provide live-in accommodation (where this would ordinarily constitute a term or condition of employment) because it is not reasonably practicable to do so. For example, an employer need not provide a single person with live-in accommodation, which would otherwise have been provided, if a married couple is already living there and sharing the accommodation with someone else would be inappropriate.

### Authenticity

Employment on the basis of sex or age is permissible where reasons of authenticity make being a particular sex or age a genuine occupational qualification (as in the case of the roles played by actors).

### Domestic work

Applicants for a domestic position in a private household may be refused employment, or appointed, on the basis of their sex, religious or ethical belief, disability, age, political opinion or sexual orientation.

### National security

A person's religious or ethical belief, political opinion, disability (in the limited sense of psychiatric illness or intellectual or psychological disability or impairment), family status (in the sense of being married to or being in a relationship in the nature of marriage with someone or being someone's relative) and national origin (or the national origin of a relative) are all reasons for not providing employment on work involving national security. Nor is there any obligation to employ persons under the age of 20 years on work for which a secret or top-secret security clearance is required. Ethnic origin is not, however, stated as a ground on which employment on work of national security may be refused.

### Privacy

Either a male or female employee, as appropriate, may be employed where the intention is to preserve reasonable standards of privacy. For example, it is not discriminatory to employ only women to sell women's underwear. Applicants for the position of counsellor on highly personal matters such as sexual matters or the prevention of violence may be appointed or refused employment on the basis of sex, race, ethnic or national origins or sexual orientation.

### Private schools

Private schools may employ certain staff on the basis that their religious or ethical belief is in harmony with the principles on which the school is based. This applies particularly to school principals and to those involved in the giving of religious instruction.

### Propagation of belief

Employment on the basis of religious or ethical belief is possible if the sole or principal duties of the position are substantially the same as those of a clergyman, priest, pastor, official or teacher among those who adopt, or in some way promote a particular belief. Social workers employed by an organisation mainly made up of persons of the same belief may also be appointed because they share that belief.

### Religion

Employment of men or women only is permissible if the position is for the purposes of organised religion and is limited to one



## Human Rights

---

sex by the doctrines, rules or established customs of the religion. It is not, for example, unlawful to refuse women admission to the Catholic priesthood.

### Genuine occupational qualification

Although the Act contains a number of specific exceptions, the Human Rights Review Tribunal may, in any case before it, declare that a genuine occupational qualification applies, effectively overriding the Act. In other words, the Tribunal may make a special exception in a particular case. An employer may seek a hearing for this purpose, but will always have to prove the exception claimed. For example, it is unlawful to refuse employment on the ground of political opinion, unless a particular job is one to which limited exceptions apply.



It is perfectly permissible to refuse employment to applicants for the position of political adviser (to a Member of Parliament, a candidate seeking election to Parliament, etc.) because of their particular political opinion. There may, however, be other jobs where political opinion is considered to be of similar importance. In such cases it would be for the employer to establish that a genuine occupational qualification applied.

### General qualification on exceptions

The exceptions provided in the Act will not apply - even though some of the duties of a particular position fall within them - if, without unreasonably disrupting the employer's activities, those duties could be carried out by some other employee. In that case, the employer's refusal of employment or promotion will remain discriminatory. In other words, if an applicant for employment or promotion could do most of a particular job, an exception cannot be argued as the basis for refusing the job if, without causing the employer undue problems, that part of the job which would cause difficulty can be done by someone else. There is no obligation to employ, however, if another applicant would be a better person for the job.

## How does this relate to personal grievances?

The Employment Relations Act 2000 provides that an employee may raise a personal grievance with the employer on the basis of:

- Sexual harassment; or
- Racial harassment; or
- Discrimination, which means either
  - Any of the prohibited grounds of discrimination (listed above) provided by the Human Rights Act 1993, subject to the exceptions provided by that Act; or
  - Their involvement in the activities of a union, which includes:
    - Being an officer, member of the committee, or otherwise an official representative of a union or part of a union; and
    - Being an employee representative in collective bargaining; and
    - Being a participant in a lawful strike; and
    - Being involved in the formation or proposed formation of a union; and
    - Being responsible for, or supporting, a claim for some benefit of an employment agreement for an employee; and
    - Submitting a personal grievance to an employee's employer; and
    - Being allocated, or applying to take, or having taken, employment relations education leave; and
    - Being a delegate of other employees in dealing with an employer on matters relating to the employment of those employees; or
- A claim that the employer has, in relation to an employee, engaged in adverse conduct for a prohibited health and safety reason, or contravened section 92 of the Health and Safety at Work Act 2015 (which prohibits coercion or inducement).

### Choice of procedures – complaint or personal grievance

There is considerable overlap between the Human Rights Act 1993 and the Employment Relations Act 2000 in respect of employment but the disputes resolution processes under each regime is substantially different. An employee must choose one of the two regimes in which to advance a complaint of discrimination. An employer is protected from potential double jeopardy where circumstances could give rise to a complaint of unlawful discrimination under the Human Rights Act 1993 and a personal grievance under the Employment Relations Act 2000.



Unlawful discrimination under the Human Rights Act 1993 should be contrasted with a personal grievance based on discrimination under the Employment Relations Act 2000. Under the former, the complainant may claim that they were subject to discrimination on the basis of disability either pre-employment or during employment but cannot challenge their dismissal under the Human Rights Act.

The Employment Relations Act 2000 provides that the only way to challenge a dismissal is as a personal grievance. The Human Rights Act 1993 choice of procedures provision only applies to sexual harassment and racial harassment, which are specific types of discrimination under that Act. The Employment Relations Act 2000 choice of procedures provision applies to any of the circumstances that may give rise to a personal grievance that could also give rise to a complaint under the Human Rights Act 1993.



## Human Rights

This includes:

- Discrimination on any of the 13 prohibited grounds
- Sexual harassment
- Racial harassment

Precisely when that choice of procedures must be made by an employee is the subject of some debate. The two Acts do not apply their respective choice of procedures provisions to the same types of discrimination (the Employment Relations Act 2000 has a considerably wider overlapping provision than that of the Human Rights Act 1993) and they do not mirror each other as to how (and therefore when) the choice is made.

The [Human Rights Act 1993](#) indicates that the choice is made when an employee either:

- Makes a complaint under the Act (this refers to section 92B when civil proceedings may be brought either by the person aggrieved or the Human Rights Commission).
- Invokes, in relation to those circumstances, the procedures applicable under the Employment Relations Act 2000 in relation to personal grievances under the relevant employment agreement (this refers to an employee's action of raising a personal grievance with an employer).

The [Employment Relations Act 2000](#) indicates that the choice is made when the employee either:

- Applies to the Authority for the resolution of the grievance (this refers to the action of filing a Statement of Problem).
- Makes, in relation to those circumstances, a complaint under the Human Rights Act 1993 (an employee makes a complaint when proceedings in relation to that complaint are commenced by the complainant to the Commission).

The key difference between the two choice of procedures provisions is in respect of the personal grievance option; the Human Rights Act 1993 indicates that the choice is made when an employee raises the grievance (earlier) rather than when the employee applies to the Employment Relations Authority (later) for it to investigate and determine the problem.

## The Human Rights Commission

Complaints may be made to the Human Rights Commission, which has the job of receiving and assessing the complaint, gathering information in relation to the complaint and facilitating the resolution of disputes about compliance with the Act by the parties concerned in the most efficient, informal and cost-effective manner possible. The Commission must offer services including information, expert problem-solving support, mediation, and other assistance to facilitate the resolution of the problem. The Commission has a lot of flexibility in relation to their procedures for disputes resolution and can provide the service in any manner, including by telephone, fax, internet or email.

### Receiving and assessing the complaint

When the Commission receives a complaint, it must first assess whether it falls within the Act in relation to discrimination; if not, the Commission is not empowered to resolve the dispute. The Commission may only take further action in relation to a complaint if the complainant or person alleged to be aggrieved informs the Commission that they wish to proceed with the complaint. If the complaint relates to a matter of which the complainant or the person alleged to be aggrieved has had knowledge for more than 12 months before the complaint is received, the Commission may decline to take further action. The Commission may also decline to take further action if, in its opinion:

- The subject matter is trivial.
- The complaint is frivolous or vexatious or is not made in good faith.



## Human Rights

---

- Having regard to all the circumstances of the case, it is unnecessary to take further action in relation to the complaint.
- There is another adequate remedy or right of appeal that it would be reasonable for the complainant, or the person alleged to be aggrieved to exercise.

### Information Gathering

When gathering information in relation to a complaint the Commission must conduct the process in private and may hear or obtain information from any persons it thinks fit. No person is entitled as of right to be heard by the Commission, but the Commission must make all reasonable efforts to give all parties concerned all relevant information gathered by it in relation to a complaint promptly after the information is gathered.



### Disputes resolution

The Commission has a lot of flexibility in their procedures and means by which they will provide dispute resolution services and may adapt this as the situation requires. Mediation must be provided and is a commonly used method of disputes resolution by the Commission. All information disclosed at a disputes resolution meeting by either party is confidential. See below for further information.

### Settlement

If at any time before or during the disputes resolution process it appears to the Commission that it may be possible for the parties to reach a settlement, the Commission must use its best endeavours to assist the parties to secure a settlement. Any settlement reached may be enforced by proceedings before the Human Rights Review Tribunal.

## Human Rights Review Tribunal

If a complaint alleging discrimination has been made, the complainant, the person aggrieved (if not the complainant), or the Commission may bring civil proceedings before the Human Rights Review Tribunal against the person or persons alleged to be responsible for the breach. Proceedings can also be brought to enforce the terms of a settlement. However, the Commission can only bring proceedings if the complainant or person aggrieved has not already brought proceedings and agrees to the Commission doing so. The Commission must consider that bringing the proceedings will facilitate the performance of its functions.

### Referral back to Commission

When proceedings are brought to the Tribunal, it must first consider whether an attempt has been made to resolve the complaint (through mediation or otherwise), and must refer the complaint back to the Commission, unless the Tribunal is satisfied that attempts at a resolution, or further attempts at resolution of the complaint by the parties and the Commission, will not contribute constructively to resolving the complaint or will not, in the circumstances, be in the public interest, or will undermine the urgent or interim nature of the proceedings.

The Tribunal may also at any time before, during or after the hearing of proceedings, refer the complaint back to the Commission if it appears to the Tribunal from what is known to it about the complaint, that the complaint may yet be able to be resolved by the parties and the Commission (for example, by mediation).

### Remedies

If the Tribunal is satisfied on the balance of probabilities that the defendant has committed a breach of the Act or the terms of a settlement of a complaint the Tribunal may grant one or more of the following remedies:

- A declaration that the defendant has committed a breach of the Act or terms of a settlement of complaint.
- An order restraining the defendant from continuing or repeating the breach.
- Damages for:
  - Pecuniary loss
  - Loss of benefit
  - Humiliation, loss of dignity and injury to feelings
- An order that the defendant perform any acts specified in the order with a view to redressing any loss or damage suffered by the complainant, or, as the case may be the aggrieved person as a result of the breach.
- A declaration that any contract entered into in breach of the Act is an illegal contract and relief in accordance with the Illegal Contracts Act.
- An order that the defendant undertakes any specified training or any other programme, or implement any specified



policy or programme, in order to assist or enable the defendant to comply with the provisions of the Act.

- Costs.
- Any other relief the Tribunal thinks fit.

It is no defence to proceedings that the breach was unintentional or without negligence on the part of the party against whom the complaint was made, but the Tribunal must take the conduct of the parties into account in deciding what, if any, remedy to grant.





### Director of Proceedings

A complainant or the Commission can make a request to the Director of Proceedings to provide representation at the Human Rights Review Tribunal. If the Director accepts the request, they become the representative of the complainant acting in a solicitor-client relationship. In deciding whether to provide representation the Director must take into account:

- Whether the complaint raises a significant question of law.
- Whether the resolution of the complaint would affect a large number of people.
- The level of harm involved in the matters that are the subject of the complaint.
- Whether the proceedings in question are likely to be successful.
- Whether the remedies available through proceedings of that kind are likely to suit the particular case.
- Whether there is likely to be any conflict of interest in the provision by the Director of representation.
- Whether the provision of representation is an effective use of resources.
- Whether or not it would be in the public interest to provide representation; and
- May have regard to any other matter the Director considers relevant.

### Appeals

Appeals against Tribunal decisions go to the High Court, whose decision is final. However, the High Court may agree that questions of law arising in appeal proceedings will be decided by the Court of Appeal. The Tribunal must have notice of any appeal within 30 days of its decision.

### Offences

It is an offence, without lawful justification or excuse, willfully to obstruct or hinder the Commission or a Commissioner, or to fail to comply with any lawful requirement, or to make a false or intentionally misleading statement. In such cases a fine of up to \$3,000 may be imposed.

## Disputes resolution services

The Commission is required by the Human Rights Act 1993 to provide services for the resolution of disputes about breaches of the Human Rights Act 1993. The Commission has set up the Disputes Resolution Team to facilitate resolution of disputes in the most efficient, informal and cost-effective manner possible. Any member of this team is impartial and does not act for any party to a dispute. The aim of the service is to assist the parties to reach a settlement; a settlement may include (but is not limited to) a payment as compensation, an apology, or an assurance that the conduct complained of will not occur again.

The dispute resolution service:

- Is free
- Is private and confidential to those involved
- Does not require parties to have legal representation

The resolution of disputes may be a very flexible process and can be achieved by:

- Self-help
- Provision of information
- Informal intervention by a member of the Disputes Resolution Team
- Mediation, which can be conducted by correspondence or phone calls or face-to-face meetings or shuttle diplomacy by a Disputes Resolution Team member



This process (introduced to the Act by the Human Rights Amendment Act 2001) was modelled on the Mediation Service provided by the Ministry of Business, Innovation and Employment (formerly the Department of Labour) under the Employment Relations Act 2000. It was designed so that the complaints process is in the control of the parties to a complaint; however, if resolution of a complaint between parties is not achieved in the first instance it is possible for the Commission to require the parties to attend a dispute resolution meeting or other form of mediation before any other step can be taken.



## Human Rights

If the complaint is settled at this stage, but any party to the settlement seeks to enforce that settlement, they may seek enforcement in the Human Rights Review Tribunal and they may seek the representation of the Director of Human Rights Proceedings for this.

If a complaint about a breach of the Human Rights Act 1993 is not resolved at this stage, then it may progress to the Human Rights Review Tribunal, either at the suit of the Director of Human Rights Proceedings or at the suit of the complainant (employee) or the aggrieved person.

The Human Rights Commission provides a complaint form, although will allow a person to make a verbal complaint if they wish. You can view the complaint form [here](#).

## For your business

It is sometimes too easy to jump to the conclusion that “discrimination” must mean unlawful discrimination as prohibited by the Human Rights Act 1993, but that is not the case. Discrimination, viewed simply, means to distinguish between like objects or people and make a choice between them for some reason. It is only when you as an employer (or as a supplier of goods or services to the public, for example) distinguish against people on any of the thirteen bases of unlawful discrimination as prescribed by the Act that you are potentially in breach of the Act and could face a complaint.

In employment, claims of discrimination on any of the thirteen prohibited grounds and sexual and racial harassment may be dealt with either under the Human Rights Act 1993 or the Employment Relations Act 2000, but not both. Any other complaint about human rights must be dealt with under the Human Rights Act 1993. If you have an employee (or other person) claiming that you have breached their human rights and you would like some assistance responding to that claim, contact your Employment Relations Consultant who will guide you on your obligations and any relevant procedural steps you may need to go through to resolve the matter.

## Remember

- Always call AdviceLine on 0800 300 362 to check you have the latest guide.
- Never hesitate to ask AdviceLine for help in interpreting and applying this guide to your 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.

*All rights reserved. This document is intended for member's use only, it may not be reproduced or transmitted without prior written permission.*

Published: March 2023

[ema.co.nz](http://ema.co.nz) | 0800 300 362

