

## A-Z Guide

# RECRUITMENT AND SELECTION



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# Use This Guide to Understand

- The two-step process of recruiting the best pool of candidates, then selecting the most appropriate person for your vacancy
- The use of interviews, pre-employment tests and checks, and your legal obligations and constraints in respect of these
- Legal principles in relation to offer and acceptance of a job
- Your obligations for providing an employment agreement
- The benefits of conducting exit interviews

## Finding the Right Person

Recruitment and selection are processes involving a sequence of steps, rather than singular events. Recruitment involves attracting a suitably sized group of candidates from which to select the most appropriate person. Allocating resources to selecting the best person for the job is both time and cost effective. Getting it wrong may lead to a waste of time and money in managing a poorly performing employee, or ultimately terminating them, requiring the recruitment and selection process to be done all over again.

## Recruitment

Establishing the foundation of the selection process through recruitment by providing a suitably sized group of candidates is important. A too-small a group may give you few options, whereas too large a group may hide the excellent among the mediocre.

## Reviewing the Job Description

Whether your vacancy results from an existing employee leaving, or a new position being created, it is important to ensure that in fact a 'job' does exist. This could be an opportunity to re-evaluate the position and consider some important questions. Can the duties of this position be reallocated? Could this position be better performed on a part-time basis? It may be that you could reduce employee numbers without having to go through possible redundancies.

If replacing an employee, it is important to review what exactly you are looking for, and whether the current job description and person specification for the role reflects this. A job description should outline the key tasks and duties an employee is to perform, and the expected levels to which they should be performed. A person specification outlines the necessary knowledge, skills and abilities considered necessary to perform the role. You should also consider whether the role may have altered or developed since the outgoing employee started, and whether you need to amend the job description to reflect this.

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



## Exit Interview

Conducting an exit interview with outgoing employees can be an effective way of re-evaluating the position. An exit interview involves discussing various issues with an outgoing employee, including the current tasks and responsibilities of the role. Put simply, to find out what the job involves, ask the person doing it. An exit interview is also part of the conclusion to the employment relationship that enables you to address any outstanding issues. It is one of the few situations where an employee may feel comfortable giving their honest opinion to their employer, providing valuable information to the organisation. Try to avoid the appearance of a 'third degree' situation. Questions could include:

- What made you look for alternative employment?
- What attracted you to this position and organisation?
- What comments would you make about this company to other employers?

Exit interviews may also prevent personal grievances, as often serious issues within an organisation first come to the attention of the employer during such meetings. If an employee raises matters which indicate that their employment was materially affected by negative elements in the workplace, then you can hear and investigate their concerns in an effort to correct them before the employee leaves. In this sense, an exit interview may be a risk management initiative.

## Finding the applicants

Once you have established the type of person you want for the role through elements identified in the job description and information gained in the exit interview, the next step is to find a pool of people to choose the most suitable person from. This can be done internally or externally.

### Internal Recruitment

The most obvious advantage to recruiting from existing staff is that the individual is already familiar with and are a known quantity to the organisation. It may also be an opportunity to develop an employee or provide them with a more interesting role, thereby retaining key talent. Disadvantages of internal recruitment include the fact that transfers or promotions create another role to fill, may result in people being promoted beyond their ability, and the opportunity to bring in new talent is lost.

### External Recruitment

Traditional newspaper advertising for candidates is largely being taken over by websites such as Seek and MyJobSpace as a means of sourcing applicants. These are more cost effective and efficient in terms of time spent recruiting. The use of recruitment agencies is also becoming more common, and some operate in specific industries.

You should keep in mind restraints on job advertising content. The Human Rights Act 1993 stipulates that advertisements for employment should not indicate an intention to commit a breach of the Act by discrimination against a person or people.

The Fair Trading Act 1986 requires that all advertisements should fairly reflect the job vacancy, and not mislead potential applicants. Section 12 requires all advertisements to fairly reflect the job vacancy, and the job should not be made to sound more attractive than it really is so as to attract better applicants. Not only is this a legal requirement, but it also makes sense in terms of retaining the person recruited for the position. If unrealistic expectations are created by the employer for a particular role, the employee is not likely to stay long in the company when they realise the true nature of the position.

Refer to the **A-Z Guides** to the **Human Rights Act 1993** and **Fair Trading Act 1986** for more information.

# Selection

## Screening

This is the initial process of matching applications to the job description and person specification and removing those clearly not suited. At this stage you should consider whether the applicant has the right to work in New Zealand.

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

### Application for Employment Forms

This can be a valuable tool for putting together an initial pool of suitable applicants who could potentially perform your role. Application forms should be completed before the interview stage and should only ask for information relevant to the position being applied for. Application forms which act as a 'fishing expedition' for irrelevant purposes may antagonise applicants and potentially breach the Human Rights Act 1993. Keep in mind that an application form is a means of seeking permission from the applicant to make reasonable invasions of their privacy to assist you in measuring their suitability for the job.

You should not rely on information provided in an application form at face value. Generally, applicants are 'putting their best foot forward' and while they may not make false claims, they may be selective with their responses. You are right to be cautious and endeavour to verify the information provided.

Refer to the **A-Z Guide to Application for Employment** for further information and a sample Application for Employment Form.

The sample should be used as a guide only, and you can use the notes to guide you in the development of your own application form.

### Pre-Employment Checks

Such checks are made to confirm an applicant's suitability for the role. Before deciding which, if any, checks you will make, consider the relevance of those checks. Some checks that are not directly relevant may be indirectly relevant. For example, a criminal record check may not seem important for the job because it does not involve money, children or being in people's homes, but it may involve overseas travel, and the applicant's ability to enter certain countries may be inhibited by a criminal record.

Checks of information after an offer of employment has been made may be problematic. But it may be helpful to include on your application form a request for a declaration by the applicant that the information they have provided is accurate and true, that you are reliant on the information being true, and that their employment may be terminated if the information is later shown to be false.

Refer to the **A-Z Guide to Pre-Employment Checks** for samples.



## Privacy issues

As an employer you must comply with the Information Privacy Principles within the Privacy Act 2020.

Principles 1 to 4 stipulate that employers should:

- Only ask questions that are relevant and have a lawful purpose
- Ask for the information only from that person or seek their consent to seek that information about them from someone else
- Indicate to the person why the information is requested and who will hold it, for how long, who will have access to it, and that the person has the right to access and correct the information.
- Not collect information by means that are unlawful, unfair or are unnecessarily intrusive
- These principles also apply to application forms

Refer to the **A-Z Guide to Privacy** for a more detailed application of these principles.

## Health and Safety at Work Act 2015

This Act imposes a primary duty of care on employers to ensure, so far as is reasonably practical, the health and safety of workers.

Part of this duty would be to ask applicants in an application form whether they have any health issues that may impact on their ability to do the job being applied for. Such a question, if posed narrowly, does not contravene the Human Rights Act 1993 and allows you to identify hazards with regard to that person. Depending on the response (and this can be indicated on the application form) you may request a medical report to establish the applicant's fitness for work and/or to gather baseline information for ongoing monitoring as part of a conditional offer of employment.

Another practicable step is to ask applicants, where it is relevant to the job being applied for, whether they will consent to ongoing biological monitoring that you are required to undertake because the work involves a process or substance that is inherently hazardous.

## Interviews

An interview follows up on the information disclosed in the application form and CV, and is an opportunity to further assess suitability. It is also the time that you may give the applicant more information about the role and the work environment. Interviews are often an evaluation process, where both parties, potential employer AND potential employee 'size up' the other party, determining whether the other is offering what they are looking for. Generally conditions of employment are commonly discussed at this stage, but it is not considered an appropriate time to negotiate terms and conditions. That should occur after an offer of employment has been made.

It is important to avoid asking questions that might indicate intent to discriminate on any of the prohibited grounds of discrimination under the Human Rights Act 1993 and to focus on skills and attributes that are required and desired for the fulfilment of the position. Open questions are a useful way of avoiding potentially discriminating questions and generally illicit more information from the applicant in relation to the job they are applying for. This is best achieved by asking questions that begin with What, Why, How, Who, When and Where. Such questions asked usually result in the giving of more than a single word answer like yes or no.

For example, asking: what sort of work do you enjoy the most? Or, when you are under pressure, what strategies do you use to manage your time effectively?

Any notes taken throughout an interview should be retained for up to 12 months. Claims of discrimination under the Human Rights Act 1993 may be brought up to a year after the discrimination is alleged to have occurred. The notes may assist in defending such a claim.

## Pre-employment Tests and Trials

Pre-employment tests should be carried out before you make an offer of employment. They can be valuable in assessing suitability and proficiency.

Before conducting pre-employment tests you should be confident that the skill you are testing for is relevant to the vacant position and that the test is not indirectly discriminatory.

Examples of pre-employment tests include:

- Psychometric testing
- Practical skills testing
- Drug testing
- Medical checks

It is not unlawful to discriminate on the basis of skill, experience, qualification or proficiency, and obviously it makes good business sense to do so. You should devise tests appropriate to the job vacancy you are trying to fill in order to test an applicant before they are offered employment. This is possible for most skills sought in the current employment environment.

Employers often want to have a prospective employee complete a short work trial in the business to assess capability before making an offer of employment. However, you should be aware that such trials are risky, and it is safer to conduct skill tests as part of the assessment process. If the candidate does work which is of benefit to the business, then they could claim that they were an employee and raise a personal grievance for unjustified dismissal if they were not offered employment at the end of the trial. Even if the pre-employment trial is successful and the employee is given an employment agreement containing a trial period, you may not be able to rely on the trial period if the employee can show that they were an employee before being given the agreement. The Employment Court has said that if an employer wants to trial an employee, then they may have to employ them under a trial period in accordance with section 67A and 67B of the Employment Relations Act 2000.

See the **A-Z Guide on Trial and Probationary Periods** for further information about trial periods.

If you still wish to have a pre-employment trial, you can mitigate the risk by setting clear boundaries. That means the intention of the arrangement should be clear, any trial should be only as long as needed for the purpose to test the relevant skills and attitude. There should be no commercial gain for your business for the work done, and the person should not be paid or rewarded, even retrospectively.

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## Human Rights Act 1993

It is unlawful to discriminate on the basis of disability. A pre-employment test may identify a disability that can be readily addressed, so it is important to evaluate test results on this basis. You should only request medical examination once you are considering making an offer or as part of a conditional offer on the test result not revealing any issues which may prevent the person from doing the job. Medical examinations undertaken as a matter of course before an offer of employment could be seen as discriminatory and may be an unreasonable invasion of privacy.

Refer also to the **A-Z Guides** to **Disability**, **Discrimination in Employment** and **Medical Examinations**.

## 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**.

## Offers of Employment

Once the person who best fits the job description and person specification has been interviewed, tested and selected, an offer can be made. It may be best not to notify the unsuccessful candidates until you have at least an indication from your first choice candidate that they are willing to accept the job. An offer of employment is most often made by a letter (posted or emailed) offering employment accompanied by an employment agreement.

### If no collective agreement is applicable

The Employment Relations Act 2000 states that every employee must have an employment agreement in writing.

The Act stipulates that you must:

- Provide the prospective employee with a copy of the intended individual employment agreement
- Advise the prospective employee that they are entitled to seek independent advice about the agreement
- Give the prospective employee reasonable opportunity to seek that advice
- Consider any issues the employee raises and respond to them

Failure to comply with these requirements may expose you to a penalty but will not affect the validity of the employment agreement between you and the employee.

The sending of an agreement to a prospective employee with an offer of employment should be the start of a negotiation of the terms and conditions of the employment being offered. The letter offering employment should clearly state that until you and the prospective employee have agreed on the terms and conditions of employment, which will be signalled by the signing of an employment agreement, you will not treat the offer of employment as accepted.



## Recruitment and Selection

A start date for work should be a term and condition that is negotiated when the other terms and conditions of employment are negotiated. Only once the agreement has been entered into, that is, all terms and conditions agreed, employment signed and returned to the employer, should an employee actually start work.

Employers are able to include a trial period in an employment agreement. The trial period clause must be in writing in the IEA and signed by both parties. This trial period can only be for up to 90 days. This trial period will prevent the employee from raising a personal grievance for unjustified dismissal if a dismissal occurs during the trial period. Trial periods are covered under sections 67A and 67B of the Employment Relations Act 2000. From 23 December 2023, all employers (regardless of size) may use a trial period provision in the employment agreement.

Refer to the **A-Z Guide on Trial and Probationary Periods** for more information.

### Where a collective agreement covers the work

If a prospective employee is not a union member, but you are a party to a collective agreement that covers the work to be done by the employee, then you must inform the employee:

- That the collective agreement exists and covers work to be done by the employee
- That the employee may join the union that is a party to the collective agreement
- About how to contact the union
- That if the employee joins the union, the employee will be bound by the collective agreement

You must also:

- Provide the prospective employee with a copy of the collective agreement; and
- If the employee agrees, inform the union as soon as practicable that the employee has entered into an individual employment agreement with you.

The employee has the choice of either being covered by the terms of the collective agreement or by an individual employment agreement.

If more than one collective agreement is applicable then you should provide the prospective employee with the collective agreement that binds the majority of your employees but advise the prospective employee of the existence of the other collective agreements. Refer to the **A-Z Guide on Individual Employment Agreements** for more information about your obligations and the different situations where individual employment agreements arise.

Refer to the **A-Z Guide on Collective Agreements** for more information.

## Appointment

The appointment phase is the last in the recruitment and selection processes which can occur once the start date has been settled. An appointment generally involves notification to all other employees that the vacancy has been filled, and introduces the appointee to the workforce. An appointment should involve a meeting between the employer and the newly appointed employee to address, as appropriate, the following:

- Introductions to key members of staff
- Timetabling of induction and orientation
- Keys, parking, security passes and identification, and uniform
- Completion of an IR330 form (tax declaration) and KiwiSaver KS1 form
- Completion of a personal details form





## Personal details forms

A personal details form is used to collect information about your new employee that may become useful during the employment relationship. New employees are sometimes uncomfortable with more personal questions, so it may be helpful to include on the form the reasons why certain information is requested. This will also ensure compliance with the principles of the Privacy Act 2020.

Some information may be transposed onto records that you are required by law to keep in respect of that employee's employment, such as their age if they are under 20 years of age and their postal address. Other information may be required for practical reasons. The employee does not exist in a vacuum while they are at work, and you may need to make contact with other people in respect of that employee. Information that may be useful is:

- Name and contact details for the next of kin and emergency contacts
- Physical address and phone numbers
- Alternative names and nicknames
- Dependants' names and schools or residences
- Allergies and medical conditions – perhaps contact details for GP
- Details of motor vehicles – identification of vehicles in allocated parking

You should only collect information for a lawful purpose and store employee personal details securely against loss and unauthorised disclosure. The information should only be accessible as wide within the organisation as necessary.

## Authorisation forms

These are forms that are completed in certain circumstances. If you are going to pay your employee by direct credit then you will need their bank account details and consent to make payment in that way. If you have agreed that deductions from your employee's wages or salary may be made from time to time, for example for equipment, union fees, training costs or insurance excess, then you will need written authorisation for those deductions if they have not been expressed in writing in the employment agreement.

## Unsuccessful applicants

Advising applicants that they have been unsuccessful should be done in a sensitive way and in general terms. Unfortunately, it may not be in the employer's interests to inform the candidate of the reason(s) why they were unsuccessful. This may provide information that invites a claim of discrimination. However, where comparative information may be helpful to a person, it is usually fine to provide that. It is not unlawful to discriminate on the basis of qualifications, experience and personal qualities, such as the ability to get along with people.

Curriculum vitae, and sometimes letters of introduction, contain personal information about candidates and should be handled sensitively. Where candidates are unsuccessful, they should be advised whether their curriculum vitae is being disposed of, returned, or retained on file for future reference.

The privacy principles bind employers seeking to employ a person. While curriculum vitae are often sent in unsolicited, advertisements usually invite interested people to send their curriculum vitae accompanied by a letter of introduction, rendering the information solicited. Privacy Principle 5 requires employers (agencies) to store that information securely to protect it against loss, misuse and unauthorised disclosure.

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



## Induction

Induction is the process of integrating a new recruit into the organisation. A good induction programme can result in lower turnover in the initial stages of employment, greater commitment to the organisation's rules and custom, and fewer misunderstandings and potential grievances.

It is important that on arrival the new employee is met, welcomed and introduced. The new employee's immediate supervisor, or another nominated person, should be responsible for the induction process.

The following topics should be addressed during the induction process:

- Internal communications
- Chain of command
- Safety procedures, equipment and clothing
- Pay, benefits, social club
- Staff Handbook
- Computer and email policies
- Holiday entitlements
- Timekeeping procedures, hours of work
- Methods of work
- Personal problems
- House rules
- Smoking policy
- Reporting absences (providing medical certificates if relevant)
- Facilities, including phones, car parking etc
- Tour of premises
- Other company policies e.g. sexual harassment

Putting this information into a company handbook along with the code of conduct or house rules means that employees can refer to it when in doubt.

# Conclusion

The processes of recruitment and selection can be enriched by beginning with an exit interview of the outgoing employee. Careful consideration of the information obtained, along with analysis of the position within your organisation can be helpful in constructing a new job description and deciding what qualities you want to attract to the vacancy.

There are many laws that impact on most stages in the recruitment and selection processes. These laws have been brought to your attention where they are relevant so that you can determine whether, or not, your processes are lawful and legitimate.

There are many other **A-Z Guides** that may provide useful information:

- • Application for Employment
- • Collective Agreements
- • Discrimination in Employment
- • Disability
- • Diversity
- • Fair Trading Act 1986
- • Fixed Term Employment
- • Human Rights
- • Individual Employment Agreements
- • Medical Examinations
- • Pre-Employment Checks
- • Privacy
- • Trial and probationary period
- • References
- • Qualifications

## 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.**

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