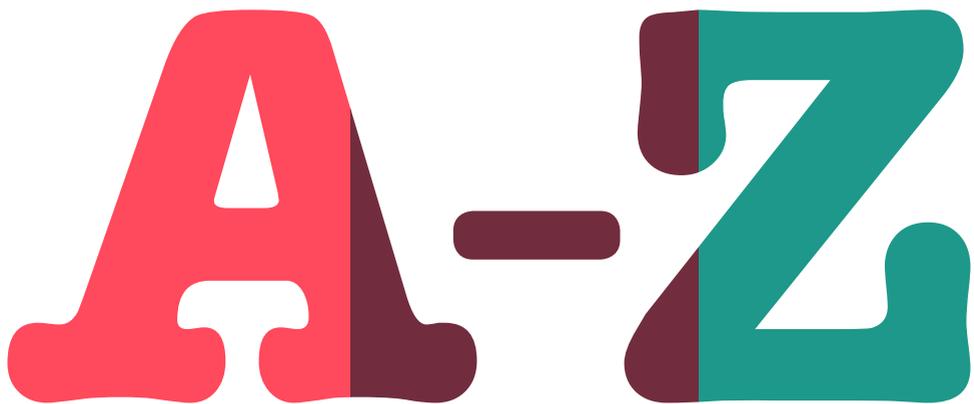




**The A-Z Pre-Employment  
Guide for employers  
& employees.**





We've compiled this A to Z from frequently asked questions, enquiries and complaints to the Human Rights Commission.

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

# Securing a good job is a life-affirming experience.

Meaningful work allows us to maximise our potential as human beings, provides us with financial security and is a powerful element in building a cohesive country.

Employers want to employ the best person for the job to enhance performance in both the private and public sectors. Equally, employees want to maximise their talents and potential in employment throughout their lives.

## **Getting the pre-employment process right.**

A key objective of the Human Rights Act 1993 is to protect people eligible to work in New Zealand from being discriminated against in their working lives.

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

Pre-employment processes generally go well when employers focus on the skills, experience and competencies required for the job. Employers can then attract and select the best person for the job against objective criteria. They can go wrong when applicants perceive they have been treated differently because of one of the 13 different grounds of discrimination under the Act, for example, their sex, race, ethnic background, age, disability or sexual orientation.

## **How this guide can help.**

These guidelines have been created to help employers, recruiters and job seekers who want to comply with the Act. They're aimed at ensuring equality and fairness for all job applicants regardless of characteristics such as gender, ethnicity, age, disability and religion.

# A.

**Advertising:** See Job advertising

## Age:

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

**A. No, you shouldn't be asked your age. It's good practice to employ the best person for the job, regardless of age.**

The Human Rights Act protects against age discrimination once you reach 16 and there is no upper limit on age discrimination.

It's not good practice for an employer to ask about a job applicant's age, or try to find out the applicant's date of birth, or ask about the dates they attended schools or other educational institutions as the information may indicate the age of the applicant.

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

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

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

**A. No, that could be seen as being discriminating on the basis of age.**

It's unlawful to publish a job advertisement that could reasonably be understood as indicating an intention to discriminate on the basis of age. Age discrimination is covered by the Act. This type of advertisement risks breaching the Act as it could be seen as suggesting that older applicants would not be employed.

The prohibited grounds of discrimination are listed in Appendix 1.

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

**A. Unless an exception applies, you have grounds for an age-discrimination complaint to the Human Rights Commission.**

**Q. In a job advertisement can an employer distinguish between junior and senior positions without it being seen as age related?**

**A. Yes. However, "senior" is best used only if it's a true description of the nature of the job and refers to the required level of expertise and competence rather than to the employee's age.**

Words such as "principal" or "experienced person" are better. A safe way of indicating a job's level is to set out the expected salary range. Similarly, "junior" should only be used if it refers to the level of expertise or competence, not to the employee's age. Descriptors such as "assistant" or "entry level" are more age neutral.



**AIDS:** see HIV

## Appearance:

**Q. Should I take out my body piercings for a job interview?**

**A. That will depend. If a body piercing is an aspect of religion or ethnicity, the Act protects against discrimination on these grounds.**

For example, females from South Asia may wear a nose stud as part of religious belief or ethnicity. Body piercings that are purely decorative are not protected by the legislation. For example, an employer can probably ask an employee to remove a tongue stud while they are at work.

If a uniform or standard of dress is required, the agreement or contract between the employer and employee should clearly state the specifications involved.

**See also:** Dress code



# B.

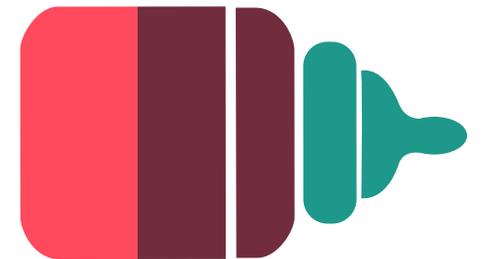
## Babies and childcare:

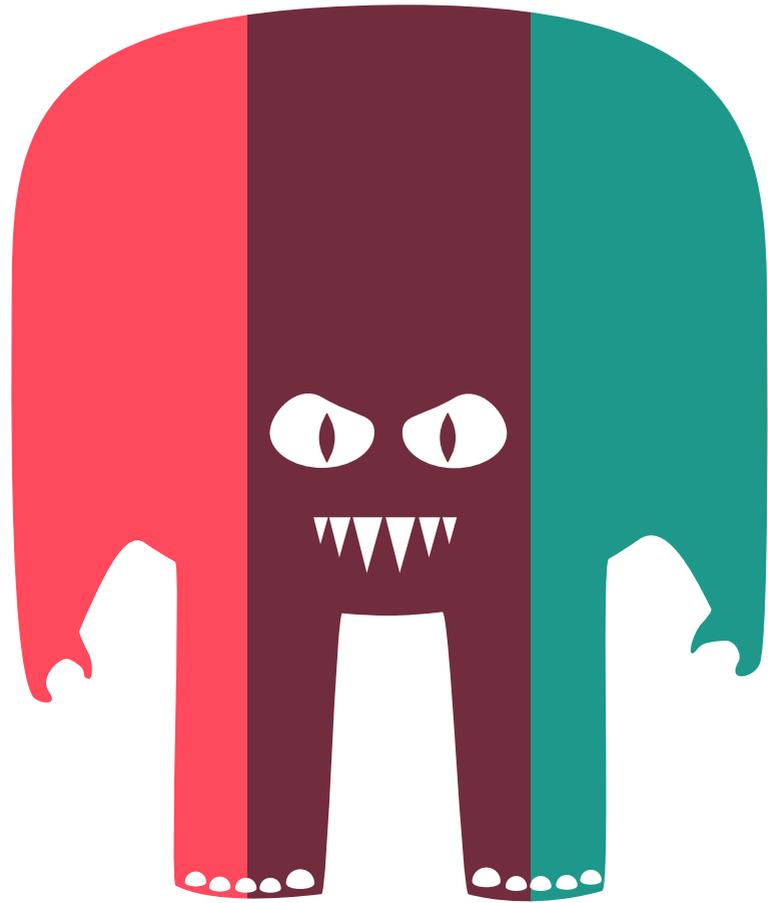
**Q. Can an employer concerned about ensuring business continuity ask job applicants about their childcare arrangements?**

**A. Employers shouldn't ask questions about childcare arrangements at a job interview. The Act protects people who are responsible for the care of children or other dependents from discrimination.**

Asking questions about childcare arrangements could lead to complaints of discrimination. However, if the job requires an employee to be away from home for extensive periods all applicants should be asked whether they can meet this requirement.

**See also:** Paid parental leave





## Behaviour-based questions:

**Q. Can I be asked behaviour-based questions in my interview?**

**A. Yes, particularly by government agencies.**

Behaviour-based questions are asked to test a particular skill or competency or to check out reactions to a specific situation. They often start with a question like, “tell me about a time when...” or “what would you do in this particular situation...?”

**See also:** Interview

## Benefits:

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

**A. No, the Act does not allow discrimination against people who are unemployed or receiving ACC payments or social security benefits.**

It also prohibits discrimination because a person has previously been unemployed or received ACC payments or social security benefits.

An employer should avoid asking questions about whether an applicant is receiving social security benefits, or ACC payments, or is unemployed. Questions like this could be seen as indicating an intention to breach the Act and can lead to complaints.

Questions about a job applicant’s employment history should be focused on the applicant’s ability to do the job, not why the applicant has been absent from the workforce.

Once someone has started work, continuing to receive ACC compensation or benefit payments could be unlawful.

**Breastfeeding:** See Babies and childcare, Pregnancy

# C.

## Credit checks:

Q. Can an employer run a credit check on me when I apply for a job?

**A. As long as you give consent and there's a legitimate reason, employers are allowed to run a credit check on you.**

An example would be if the job involves dealing with money, accounts, or financial administration. Ideally credit checks should be limited to the shortlisted job applicants. Generally speaking, credit checks should not be undertaken to create the shortlist of applicants. The job applicant must consent to the employer doing a credit check.



## Criminal records:

**Q. Can an employer require me to disclose my criminal record?**

**A. Yes, if the criminal convictions are recent your prospective employer has the right to know about your criminal record.**

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

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

Job applicants who want to know more about the clean slate law should get independent legal advice from a lawyer or community law centre or get information from the Ministry of Business, Innovation and Employment helpline: 0800 20 90 20.

**Q. What impact does the clean slate law have on the questions an employer can ask a job applicant, either in an application form or in an interview?**

**A. The clean slate law applies to employment and any other situations where someone may be asked about criminal convictions, for example tenancy, insurance and bank application forms.**

If a person meets the eligibility criteria in the clean slate law, when asked about criminal convictions or a criminal record they are able to respond that they have no criminal record. It is an offence under the clean slate law for someone without lawful authority to ask or require another person to disclose a criminal record when that person is entitled by law not to. The offence carries a maximum penalty of \$10,000.

The Ministry of Justice has information on the clean slate law <http://bit.ly/cleanslateact04>

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

**See also:** Police vetting

# D.

## Disability:

**Q.** Can an employer advertise that it's a requirement of the job to have good physical mobility?

**A.** Yes, as long as it's essential for the job.

For example, an employer who wants to hire an electrician to work onsite in commercial, industrial or residential buildings may require good physical mobility as an essential qualification for the job. However, good physical mobility is unlikely to be considered an essential competency for an administrative job.

The Act contains a concept known as reasonable accommodation. Reasonable accommodation means making changes to the workplace to ensure equal employment opportunities. For example, changes might include installing a different desk or modifying hours or patterns of work. Many such adjustments can be made with minimal expense and disruption.

All new employees involve cost to an organisation in providing office space, computers and other resources, induction processes, and training. Very little extra cost may be involved in accommodating an employee with disabilities and some can bring their own assistive technology into the workplace.

Where an applicant would otherwise be the best person for the job but it's not reasonable to accommodate that person's needs, or to do so would cause unreasonable disruption to the employer's activities, there's no legal obligation to employ that person.

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**See also:** Reasonable accommodation

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

**A.** Yes, if it's reasonable to do so.

If you are the best applicant for the job and you have a disability that requires modification to the workplace or work practices so you can perform the job, an employer should undertake this work if it is reasonable to do so. In some situations, it may not be reasonable for the employer to undertake the necessary modifications. For example, it might be reasonable to provide vision-enhancing software but not to install a lift to provide access.

**Q.** Can an employer test me to ensure I'm not a carrier of illnesses or diseases?

**A.** Yes, if being free of illnesses or disease is an essential qualification for the job.

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

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

**A.** No, if the hidden disability would not prevent you from carrying out the work satisfactorily.

The employer should let all job applicants know the requirements of the job and then use the pre-employment process to determine whether they are able to do the job. This could include asking whether they have any medical or physical conditions or disabilities that might prevent them from carrying out the work to a reasonable standard.

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**See also:** Honesty





## Discrimination:

Q. What is discrimination?

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

The Commission will accept a complaint if:

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

## Domestic employment:

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

**A. Yes you can. The Act makes an exception for domestic employment in a private household.**

## Dress code:

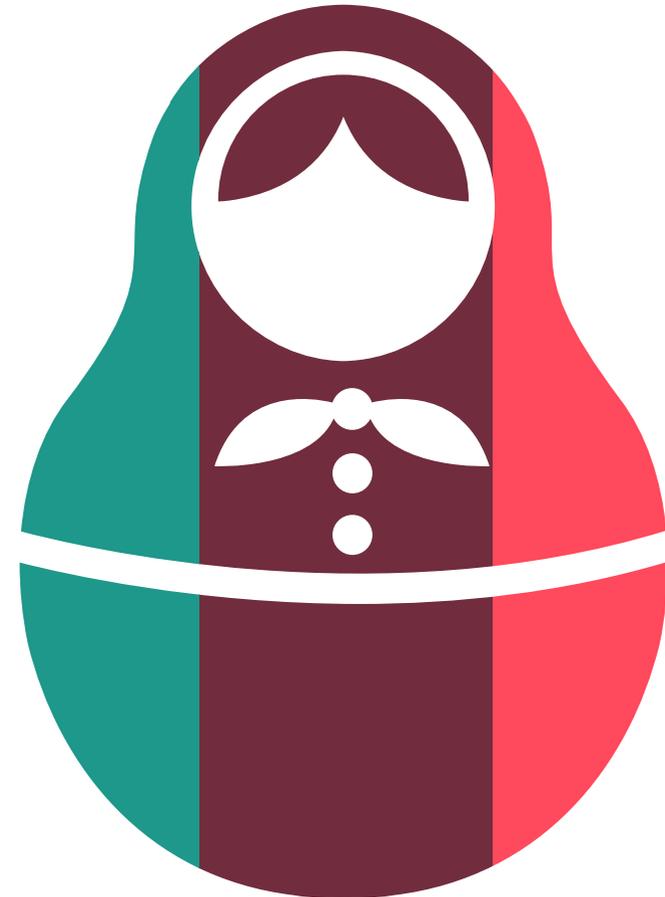
**Q. Can an employer ask me to comply with a particular dress code, such as how to arrange my hair or what I must wear at work?**

**A. Yes, if the employer has policies (for example a health and safety policy) that require employees to wear a uniform or a dress code, or a policy relating to appearance and grooming, that may require a change of appearance or hairstyle.**

However, the Act may protect against discrimination where appearance or hairstyle is an aspect of religion or ethnicity. For example, an employee who is a Sikh and wears a turban would not have to remove it unless

wearing the turban would breach health and safety requirements.

Appearance or hairstyle that is not specific to religion or ethnicity is not protected by the Act.



## Drug testing:

Q. Can an employer refuse an applicant a job because they will not take a drug test?

**A. Nothing in the Act stops an employer from insisting on drug testing. Whether it is appropriate for a job applicant to undergo a drug test will depend on the nature of the job.**

Testing can be a legitimate requirement for a safety-sensitive role or environment. In certain occupations, for example a pilot or a bus driver, being drug free is a genuine occupational requirement because of public safety.

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

Section 19 of the Health and Safety in Employment Act obliges an employee to take all practical steps to ensure their own safety while at work and to not cause harm to any other person while at work.



# E.

## Entitlement to work in New Zealand:

Q. Can an employer ask me if I'm entitled to work in New Zealand?

**A. Yes, because it's unlawful to employ people who aren't entitled to work here.**

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

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

**A. Employers may (but aren't required to) ask for documents like passports, birth certificates, citizen certificates, residence permits or Australian residence return visas.**

Employers should ask for evidence of entitlement to work in New Zealand before offering employment. A New

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

New Zealand and Australian citizens and residents (including people from the Cook Islands, Niue, and Tokelau) don't need a permit to work in New Zealand.

The passports of job applicants from outside of New Zealand, the Cook Islands, Niue, Tokelau or Australia will need to have either a New Zealand residence permit, or work permit label or stamp as proof of entitlement to work in New Zealand.

The Ministry of Business, Innovation and Employment provides detailed information about entitlement to work in New Zealand. Telephone 0508 55 88 55 or visit the website [www.immigration.govt.nz](http://www.immigration.govt.nz)



## Equality:

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

**A. Yes, under special circumstances the Act allows employment initiatives to help people against whom discrimination is unlawful and who need assistance to achieve equality with other members of the community.**

This is known as positive discrimination or affirmative action or special measures. For more information take a look at our Guidelines on Measures to Ensure Equality at [www.hrc.co.nz](http://www.hrc.co.nz) You can also get a copy of the Guidelines from the Commission by telephoning 0800 496 877 or by sending an email to [infoline@hrc.co.nz](mailto:infoline@hrc.co.nz)

**Ethnicity:** See National origins

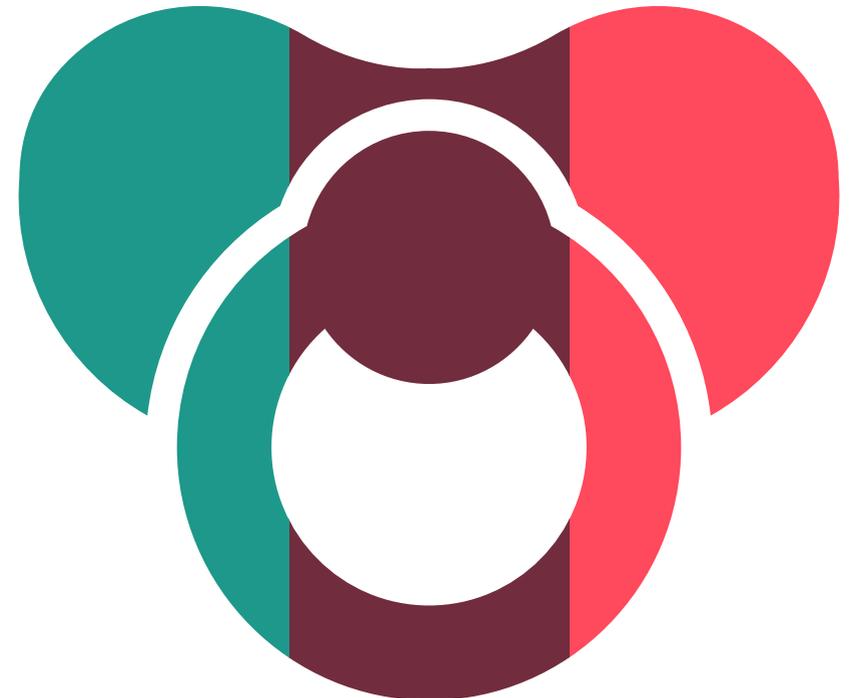
# F.

## Family status:

**Q. Can I be asked whether I have children?**

**A. No, employers should avoid asking job applicants whether they have children or other dependants.**

They should also avoid asking for details about dependants, such as their age. The Act protects people from discrimination because they have (or do not have) children or other dependants.





## Flexibility:

Q. At my job interview can I ask for flexible work hours so I can take care of my children after school?

**A. Yes, a job applicant can always ask an employer about flexible working hours. If they're granted, they'll become part of the terms of employment.**

From March 2015 anyone is entitled to ask their employer for flexible working arrangements and there is no limit to how often they may do so. Employers must respond to such requests within one month. The employer can refuse the request only on one of the grounds set out in the Employment Relations Act and the employee can appeal the employer's decision. For more details refer to: <http://bit.ly/flexibleworkguide>. The Human Rights Commission considers that flexible work arrangements are an important element in providing equal employment opportunities to groups who are often overlooked or marginalised, parents and carers in particular.

# G.

**Gay:** See sexual orientation

**Gender identity:** See Transgender/Trans people

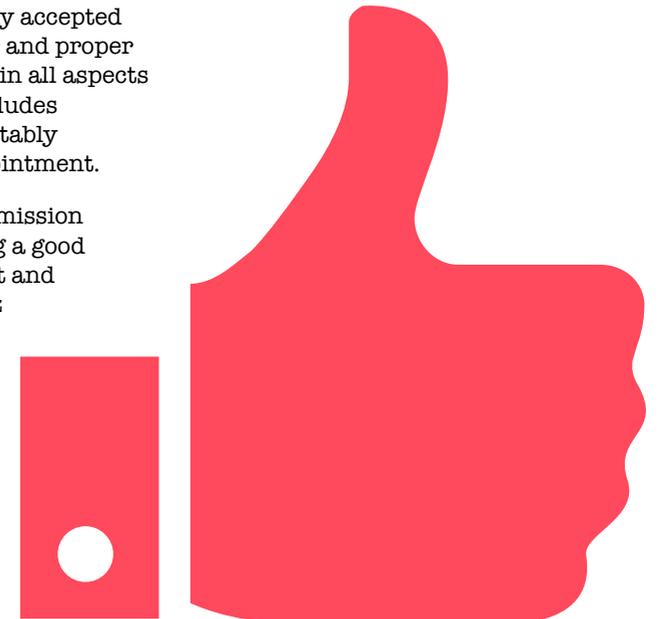
## Good employer:

Q. What does being a “good employer” mean for recruitment and selection processes?

**A. State sector employers (including Crown entities and companies) are obliged to be “good employers” under the State Sector Act 1988 and the Crown Entities Act 2004.**

Under these Acts a good employer is one who has a personnel policy with provisions generally accepted as necessary for the fair and proper treatment of employees in all aspects of employment. This includes impartially selecting suitably qualified people for appointment.

The Human Rights Commission provides advice on being a good employer in recruitment and selection. Visit [hrc.co.nz](http://hrc.co.nz) for more details.



# H.

## Health:

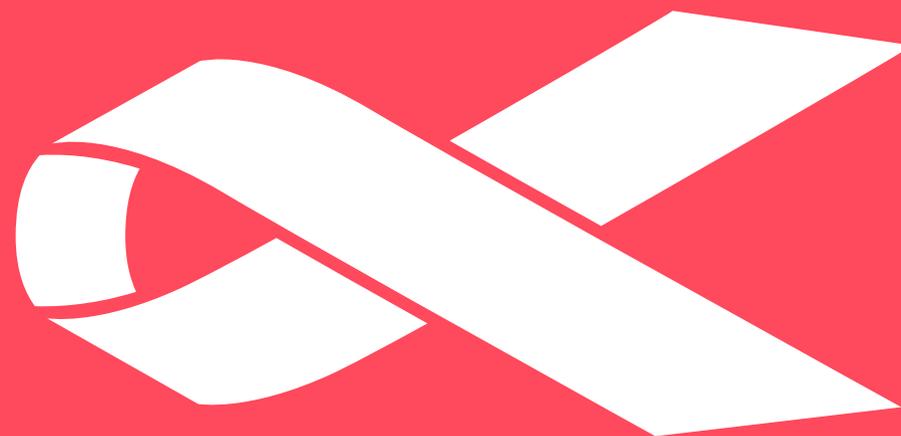
**Q.** Can an employer ask me during the job application process or at an interview to disclose my medical/ACC history?

**A.** No.

During the interview the employer should be establishing whether the applicant is able to do the job. The job applicant should be told what the job's requirements are and then asked about any medical or physical conditions or disabilities that might prevent them from carrying out the work satisfactorily.

**Q.** Can an employer offer someone a job subject to a satisfactory medical examination?

**A.** Yes, an offer can be made on condition the applicant passes a medical examination, which may include a drug and alcohol test.



## HIV:

**Q.** Do I have to disclose in the job application that I'm HIV positive?

**A.** No you don't.

It's unlawful to discriminate against people with the HIV virus. The definition of disability in the Act includes the presence of organisms in the body capable of causing illness.

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

## Honesty:

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

**A.** Usually it's not discrimination if an employer withdraws the job offer.

Job applicants should honestly answer questions asked in a job application form and during an interview. There have been several high-profile cases where applicants falsified educational qualifications, and this has led to more rigorous checking of qualifications.

An employee may also be subsequently dismissed for being dishonest in the application or during the interview. If an employee does not disclose a condition that would impact on their ability to do the job, the employer can withdraw the job offer.

**See also:** Health; Qualifications

# I.

## Indirect discrimination:

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

**A. Yes, provided the physical characteristics are essential for performing the job satisfactorily or for meeting safety requirements.**

For example, a bus company might specify that drivers have to weigh less than 100kg because the driver's seat is not capable of carrying a weight of more than 100kg. See also: Overweight/obesity

The Act also prohibits indirect discrimination. Indirect discrimination occurs when an apparently neutral job condition or requirement has the effect of excluding some job applicants on one of the grounds prohibited by the Act.

For example, a minimum-height requirement is likely to have more effect on women than on men and, as well, may have more effect on men from some ethnic groups than from others. Therefore, physical characteristics may only be specified if there is a genuine reason for doing so.

A complaint of indirect discrimination may be defended on the grounds of "good reason". This means there are objectively sound reasons for the practice that are unrelated to any prohibited form of discrimination.



## Interview panel:

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

**A. Nothing in the Act requires that.**

However, it is desirable for medium to large size firms to have a gender and/or ethnicity balance on interview panels to ensure a job applicant's gender or ethnicity is not overlooked. Having this balance is likely to reduce the effects of stereotypes.

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**See also:** Behaviour-based questions

**Q. Can I take a support person to my job interview?**

**A. Usually you can. However, the Act does not mention taking a support person to a job interview.**

Some employers allow or encourage applicants to take in a support person. If you want to bring a support person to the interview you should tell the employer before the interview.

# J.

## Job advertising:

**Q. Can an employer advertise for a “girl Friday”, a “barmaid”, a “barman”, a “waiter”, “waitress”?**

**A. The Act prohibits the use of gender-specific words in job advertisements (for example barman) unless the advertisement makes it clear that the job is open to all to apply.**

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

**A. Nothing in the Act prohibits this type of advertisement.**

However, if the words and description are interpreted as code for “no one aged over 25 need apply” then an older applicant might complain of indirect age discrimination.

**Q. Can an employer advertise for a “mature” worker?**

**A. No, the word “mature” is often associated with age and is probably best avoided.**

Alternative words such as “responsible” or “capable” or “possess initiative” or “have good judgment” usually more accurately describe the qualities employees need to have.

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

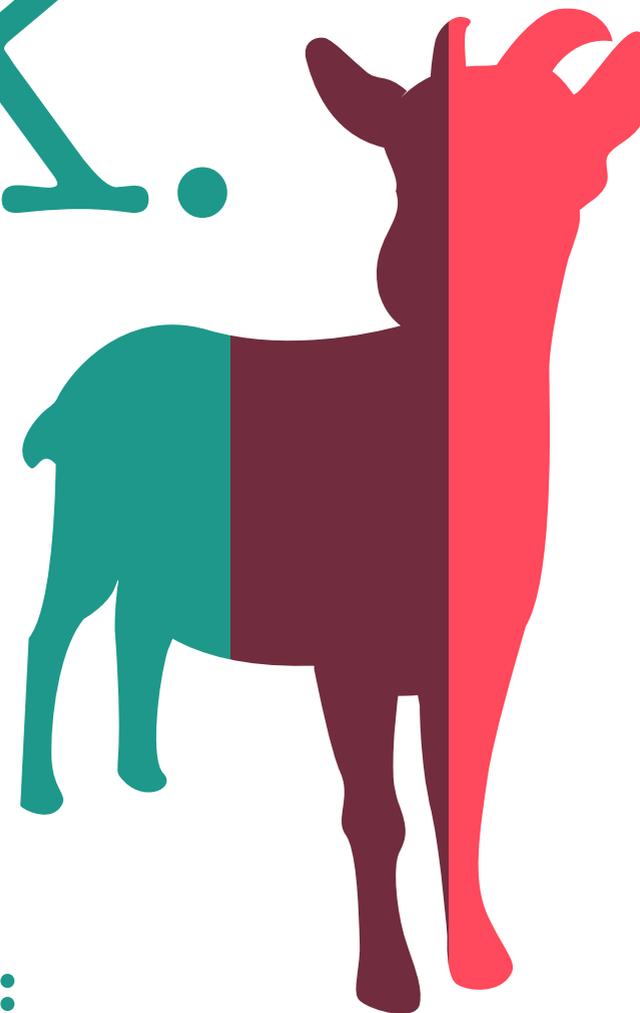
**A. Yes, so long as te reo Māori expertise is a required job competency.**

**Q. Am I responsible as an employer for a job advertisement placed by a recruitment consultant?**

**A. Yes. If a recruitment consultant places a job advertisement on behalf of an employer, both the recruitment consultant and the employer are liable for any breaches of the Act.**

**See also:** Knowledge

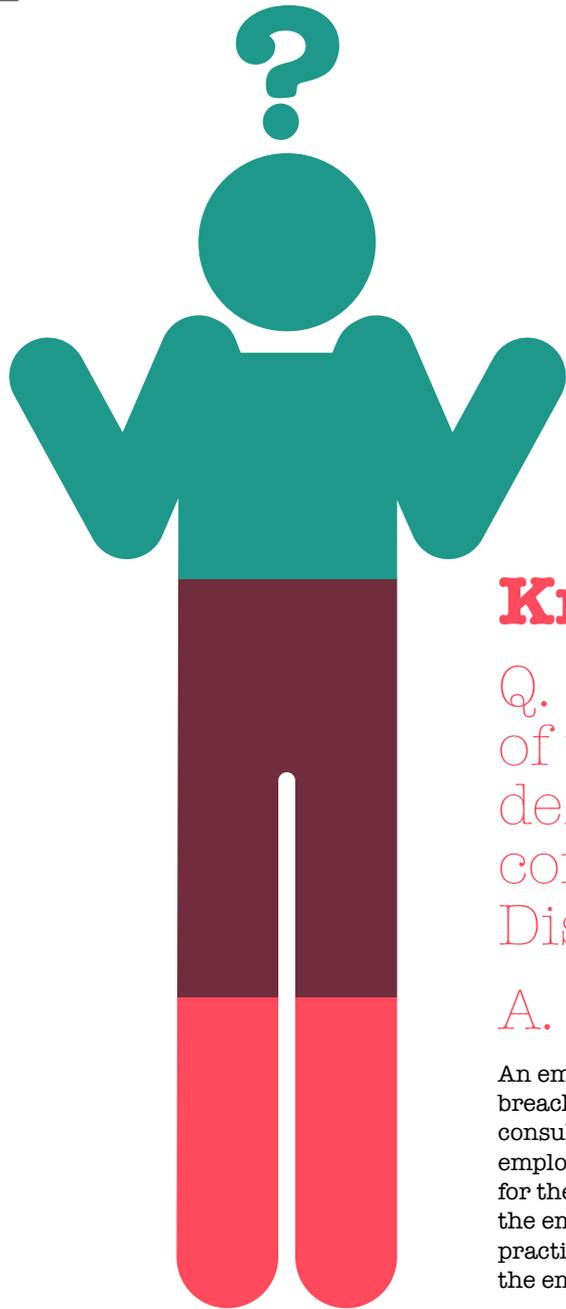
# K.



## Kids:

**Q. Can I be asked if I intend to have kids?**

**A. Employers should avoid questions relating to pregnancy, proposed pregnancy, contraception or family planning, or parenthood. These types of questions risk breaching the Act as they could be seen as indicating an intention to employ, or not employ, applicants based on whether they're responsible for children or not.**



## Knowledge:

Q. Is ignorance of the Act a defence to a complaint of Discrimination?

A. No.

An employer can also be liable for breaches of the Act by a recruitment consultant or actions of their employees. An employer may be liable for their employees' actions unless the employer shows that reasonably practicable steps were taken to prevent the employee from doing the act.

**See also:** Job advertising

# L.

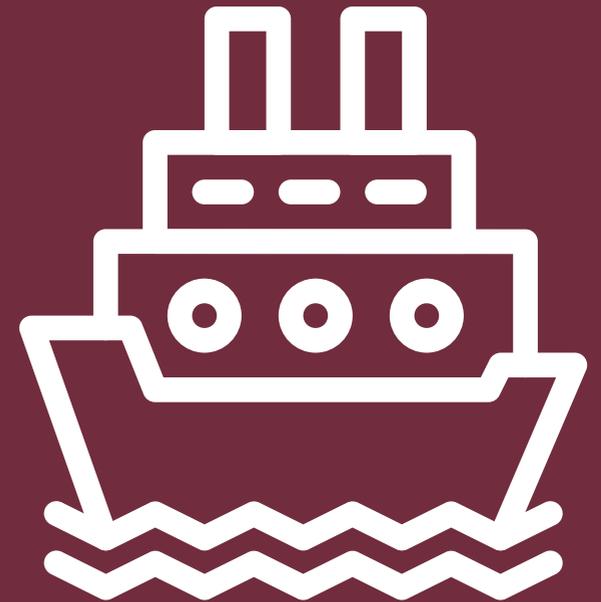
## Leave:

Q. Is it reasonable to ask about leave entitlements during a job interview?

A. Yes. All employees are entitled to at least four weeks paid holidays a year. Some agreements provide for more holidays in addition to this. Employees must be given the opportunity to take at least two of the four weeks of holidays continuously, if they want to.

**See also:** Paid parental leave

**Lesbian:** See Sexual orientation



# M.

## Marital status:

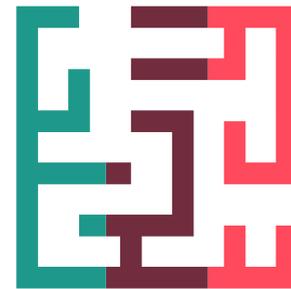
**Q. Can I be asked at a job interview if I'm married, in a civil union or a de facto relationship, single, divorced or separated?**

**A. No, you shouldn't be asked about your marital status.**

However, in some situations an employer is entitled to ask whether a husband, wife, or partner works with the employer or elsewhere in the same industry. See the information relating to Partners for an explanation of when this might happen.

**Medical:** See Health

**Men:** See Sex



## Mental illness:

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

**A. An employer should not ask for general information about your medical/ACC history.**

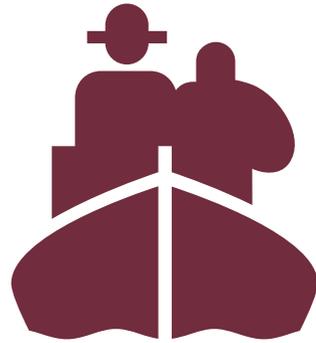
The employer should be establishing whether the applicant is able to do the job. This includes establishing whether an applicant has any medical conditions or disabilities that might mean the work could not be satisfactorily carried out.

A job applicant should first be made aware of the job's requirements and then asked about any medical conditions or disabilities that might prevent them carrying out the work satisfactorily. The onus is on the employee to disclose any condition that may affect their ability to do the job.

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

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

**See also:** [Health](#)



## Migrants:

**Q. What are my rights as a migrant to access work?**

**A. You have the same rights in relation to pre-employment and employment as others in New Zealand.**

Migrants who believe that they have been discriminated against in pre-employment such as shortlisting or in the interview process should contact the Human Rights Commission.

**Q. How can employers attract job applications from migrants?**

**A. Employers wanting to increase staff diversity need to audit their recruitment and selection processes to ensure they're not indirectly filtering out applications from migrants.**

For example, how a job is advertised can either encourage or dissuade migrant applications. Important aspects include concentrating on core competencies, placement of the advertisement, the style, tone and tenor of the advertisement and whether it uses Equal Employment Opportunities (EEO) statements and shows a commitment to diversity.

Research shows that having minority members on selection panels improves the success rate for migrants. Interviewers who have been trained to avoid “like me” bias also increase the chances of employing migrants. Research shows the more similar migrants are in looks, language and European heritage to New Zealanders the more successful they are in securing employment. EEO training mitigates against this and is important for all members of selection panels.

**Moko:** See Tattoo

**See also:** New Zealand

# N.

## National Origins:

**Q.** Is an employer able to interview only applicants from a particular ethnicity or national background because a majority of their customers are from that ethnicity or national background?

**A. No, in most circumstances interviewing only applicants from a particular ethnicity or national background because of customers' preferences will breach the Act.**

However, an employer can consider an applicant's ethnic or national origins if it is relevant to the job, for example if the job is that of a counsellor on highly personal matters such as sexual matters or the prevention of violence.



## New Zealand experience:

Q. Can an employer specify that I have to have “New Zealand” experience?

**A. No, unless they can objectively justify that it's essential for the job. Otherwise, the requirement for New Zealand experience may well amount to indirect discrimination.**

See also: Migrants



# O.

## Overweight | Obesity:

Q. Does being rejected for a job because you're overweight breach the Act?

A. No, body size or obesity is not protected grounds of discrimination under the Act.

It's possible that discrimination on the grounds of a person's body size or obesity might constitute disability discrimination particularly if their obesity is a symptom of a medical condition. Currently, there's no case law in New Zealand to provide any guidance on the issue.



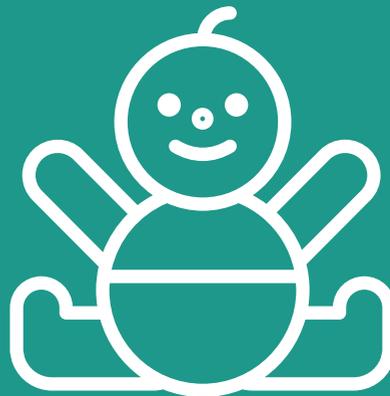
# P.

## Paid parental leave:

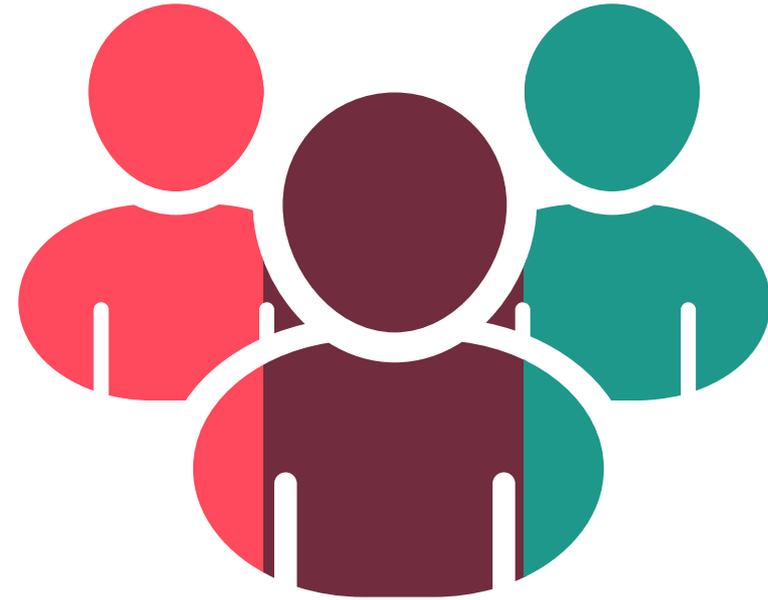
Q. Should I ask about paid parental leave at my job interview?

**A. You're entitled to ask about paid parental leave. This is a 16-week period available to employees who, by the time the baby is born, have worked for at least six months for the same employer.**

This provision also applies to employees who adopt a child aged up to five years. Other eligibility requirements are set out in the Parental Leave and Employment Protection Act 1987.



**See also:** Pregnancy; Babies and childcare



## Partner, spouse or relatives:

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

A. Yes.

An employer can ask whether you are married to; or in a civil union or de facto relationship with; or a relative of anyone who works at that workplace or elsewhere in the same industry.

The Act permits employers to impose restrictions if any of the situations set out above apply and there is either a reporting relationship between the two positions or a risk the employees could collude in a way that would be detrimental to the employer.



## Photographs:

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

A. Nothing in the Act prevents an employer from asking for a photo.

However, a photo should not be used to look for particular characteristics to avoid interviewing a job applicant because of, for example, sex, age, ethnicity or any other prohibited ground of discrimination.

## Police vetting:

Q. Can an employer require me to undergo police vetting as part of the job application process?

A. Some jobs involving caring for children, older people or more vulnerable members of society might require you to be vetted by the Police.

This is not a criminal record check. The information provided by the Police may be different to that provided by a criminal record check. For more information visit: [www.police.govt.nz](http://www.police.govt.nz)

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

See also: Criminal records

## Political opinion:

Q. Can an employer ask job applicants about their political opinions?

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

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

A. No, usually you don't have to disclose that you're a member of a political party.

However, if you are seeking employment as:

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

the Act allows the employer to ask questions about political opinions. Unless one of the above exceptions applies, a job applicant is not required to disclose that they're a member of a political party.



## Pregnancy:

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

**A. No, an employer cannot refuse you employment because you're pregnant.**

A job applicant should be made aware of the requirements of the job. All job applicants should be asked about any medical or physical conditions that might affect their ability to carry out the work satisfactorily.

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

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

Overseas case law suggests that it is unlawful for an employer to decide in advance not to employ women of child-bearing age because of a hazardous working environment.

The job applicant should be informed of the risks and be free to decide whether to accept any offer of employment that might be made.

However, if an employer subsequently becomes aware of an employee's pregnancy, they may have to temporarily transfer the employee to a different job because of health and safety legislation requirements that protect all employees' health.

**See also:** Paid parental leave



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

**A. Yes. Many women now return to work relatively soon after having children and good employers do their best to provide them with the privacy and facilities required for breastfeeding.**

New Zealand currently does not have any set minimum standards for breastfeeding breaks and facilities at work. Under the Employment Relations Act employers must provide unpaid time and facilities for breastfeeding employees as long as it is reasonable and practical to do so.

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

The Employment Relations Act also contains anti-discrimination provisions that apply to breastfeeding women. However, breastfeeding is not identified in the anti-discrimination legislation whereas “sex, which includes pregnancy and childbirth” is. Your Rights as a Breastfeeding Mother is available at [www.hrc.co.nz](http://www.hrc.co.nz)

The Ministry of Business, Innovation and Employment has produced Breastfeeding in the Workplace: an employer's guide to making it work, which is available at: [www.employment.govt.nz/publications](http://www.employment.govt.nz/publications).



## Privacy:

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

**A. In most circumstances personal information should be collected directly from the applicant unless the applicant gives permission to do otherwise.**

Generally, an employer should not seek information about a job applicant from a current or former employer without the job applicant's consent.

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

**A. It's a good idea for the employer and the job applicant to agree on how long the CV will be kept before it's destroyed.**

Sometimes this can be overlooked, so it's good for an employer to establish a standard set of procedures dealing with how long CVs will be retained. It's acceptable to keep CVs for a reasonable period before either returning or destroying the CVs of the unsuccessful applicants.

**Q. If I'm an unsuccessful applicant can I ask for my CV to be returned and for all information about me to be destroyed?**

**A. Yes.**

Be aware that an employer can use information about unsuccessful job applicants if someone complains about the decision on who was employed. Unsuccessful candidates' CVs may be kept on file in case other vacancies arise, but the employer and job applicants should agree on this during pre-employment processes.

---

**See also:** Unsuccessful application

**Q. Can an applicant have access to their information collected by an employer during the recruitment process?**

**A. Yes. However, under the Privacy Act there are some reasons for withholding material, for example when a reference has been supplied in confidence.**

If a request for information is refused, the applicant can ask the Privacy Commissioner to investigate whether or not the refusal was justified. The Privacy Commissioner can be contacted by phone on 0800 803 909 or by email: [enquiries@privacy.org.nz](mailto:enquiries@privacy.org.nz)

# Q.

## Qualifications:

Q. What qualifications should an employer ask for?

A. That will depend entirely on the nature of the job.

Every job has competencies which successful applicants need to perform to a reasonable standard. In some cases, a specific qualification such as a relevant specialist degree or a technical or trades qualification is essential. Some occupations require formal qualifications, as part of professional accreditation, such as a medical degree for doctors. In other cases qualifications may not be essential to the job.

**See also:** Honesty



Employers should ensure that in job advertising, shortlisting for interviews, and the interview process, the qualifications they're seeking are both necessary and relevant for the job.

In their CVs and job applications, applicants need to make the most of their experience and how it relates to the skills required for the job. For example, volunteer or unpaid work may involve skills such as time management, budgeting, administration, and relationship management that are transferable and relevant to a paid job.

# R.

## Race:

Q. Can I be asked to state my race on a job application form?

A. No, discrimination on the basis of race is prohibited by the Act.

Employers should avoid asking questions or asking for information about the race, colour, ethnic or national origins of the job applicants unless they are collecting anonymous statistical data for EEO reporting or for profiling who responds to their job applications. If an employer is collecting data for those purposes it should ideally be collected on a separate form.



## Reasonable accommodation:

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

A. Reasonable accommodation is not straight forward, either as a concept or how it's dealt with in the Act.

Reasonable accommodation describes creating an environment that's intended to ensure equality of opportunity to meet:

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

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

The Act creates a clear obligation for employers to meet the particular needs of an employee with disabilities or religious or ethical beliefs. An employer is obliged to reasonably accommodate an employee's religious beliefs and needs relating to disability provided it does not unreasonably disrupt the employer's activities. The Act provides a number of defences but before an employer can rely upon them, they need to genuinely consider whether the job could be adjusted by reassigning aspects that the job applicant is unable to do to another employee.

In an employment setting factors such as:

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

will be relevant in assessing reasonableness.



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

**A. The short answer is no.**

However, as many adjustments are minor and involve minimal outlay, in the interests of EEO and attracting quality candidates, employers should try and accommodate a job applicant's needs.

Three training and employment support funds are available for people with disabilities in New Zealand. They are: Training Support, Job Support and Self Start. Each fund has set targets to assist people who have higher support needs. There is a focus on ensuring that the funds are used to cover the applicant's 'cost of disability' - additional costs a jobseeker or student has as a direct consequence of their disability, when undertaking the same job or training as a person without disability. The funds encourage people with disabilities into mainstream employment. More information about the funds is available from Workbridge: <http://bit.ly/workbridge>



## Recruitment consultants:

**Q. Can an employer ask a recruitment consultant to ensure that the only job applicants who are shortlisted are from a particular group, for example young or Pakeha?**

**A. No**

The Act applies in the same way to the recruitment consultant as it does to the employer, even if the recruitment consultant is acting on behalf of or following the instructions of the employer.

## Relatives:

**Q. Can I complain about discrimination if I did not get a job because of a relative's actions: for example, my brother who was a previous employee was sacked for dishonesty?**

**A. Yes, the Act prohibits discrimination because you're a relative of a particular person.**

The Act has a broad definition of relative: it means any other person who:

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

## Religious beliefs:

**Q. Can an employer ask job applicants if there's anything to prevent them working on Friday, Saturday or Sunday?**

**A. If an employer is concerned about a job applicant's availability to work on religious holidays, they could explain the schedule of work and ask the applicant whether it causes any difficulties.**

For example, if an applicant's religion does not allow work on Saturdays, the employer must adjust the shifts to accommodate the applicant, as long as this adjustment would not be unreasonably disruptive.

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

**Q. Can I ask an employer to provide me with a place of prayer at my workplace?**

**A. Where a religious belief requires its believers to follow a particular practice, an employer must accommodate the practice as long as doing so does not unreasonably disrupt the employer's activities.**

Within particular work places it may be possible to provide a room or other designated place at the required times.

**See also:** Reasonable accommodation





## Risk of harm:

Q. Can an employer treat me differently if there's a risk I might hurt myself, or others, due to my disability?

**A. Yes, the Act has an exception allowing employers to treat job applicants differently where the duties of the job or work environment pose an unreasonable risk of harm to the applicant or to others.**

For example, a person with a serious visual impairment who applies for a job as a driver may fall within this exception.

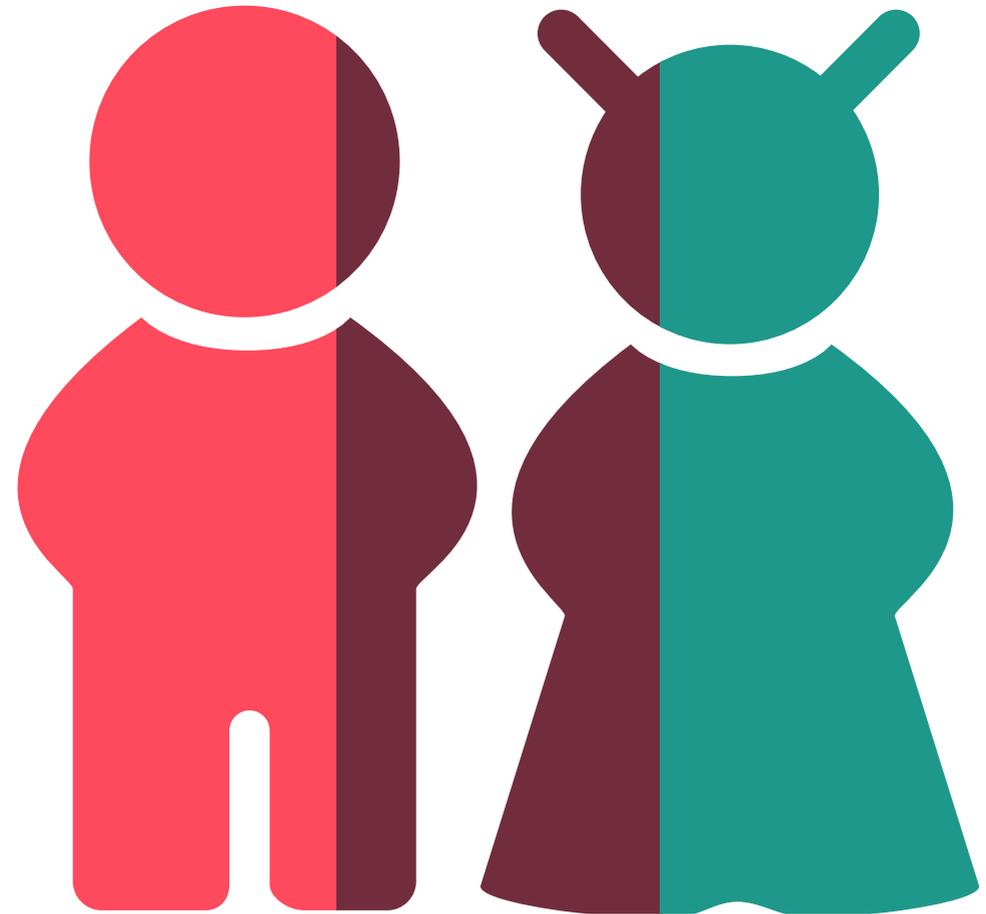
If a job applicant has a disability, an employer must decide whether there is a health and safety risk resulting from the applicant's disability and whether it is reasonable to take that risk.

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

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

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

The Act places the onus on an employer to reduce any such risk to a normal level unless doing so would cause unreasonable disruption.

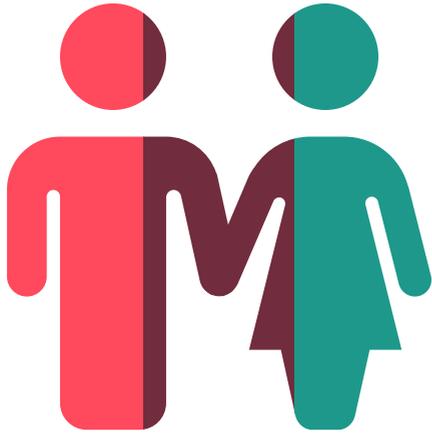


SS.

## Sex:

Q. Can an employer advertise for a male nurse to look after an elderly male patient who does not want a female nurse or vice versa?

**A. You can't advertise for a specific gender to fill a position unless the employer can prove that being male is a genuine occupational qualification. The law in this area has not been tested.**



## Sexual harassment:

Q. I think that the job interview contained sexual innuendo, what are my rights?

**A. The Act makes it unlawful to request sexual contact, sexual intercourse, or any other form of sexual activity that contains overt or implied promise of preferential treatment or an overt or implied threat of detrimental treatment.**

It's important for employers to ensure that interviewers and recruiters are trained to avoid sexual innuendo or other inappropriate behaviour and to have formal processes around the next stage of the process following an interview. Many organisations have policies that deal with sexual harassment; it's essential that the policy covers pre-employment as well as employment. Preventing harassment and bullying is one of the seven key elements of being a good employer.

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

**A. If you've been promised a job, or not given a job, because of sexual harassment you can make a complaint to the Human Rights Commission under the Act.**

Sexual harassment can take place through:

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

The Employment Relations Act does not apply to sexual harassment in a pre-employment situation.



## Sexual orientation:

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

**A. No, but there are a limited number of situations the sexual orientation of a job applicant can be taken into account.**

The Act says sexual orientation means being heterosexual, homosexual or lesbian or bisexual.

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

**A. One is domestic employment in a private household (see Domestic employment). Another is where the job is that of a counsellor on highly personal matters such as sexual matters or the prevention of violence.**

The sexual orientation of a person may also be taken into account in the ordination and engagement of clergy. In 2013 the Human Rights Review Tribunal upheld a decision not to ordain a gay man. The Tribunal relied in part on an exception in the Act whose purpose is to preserve the institutional autonomy of organised religions when making decisions about appointing clergy and ministers.

**Q. Can an employer ask me about my relationship with my next-of-kin or emergency contact person when it will effectively disclose that I'm gay?**

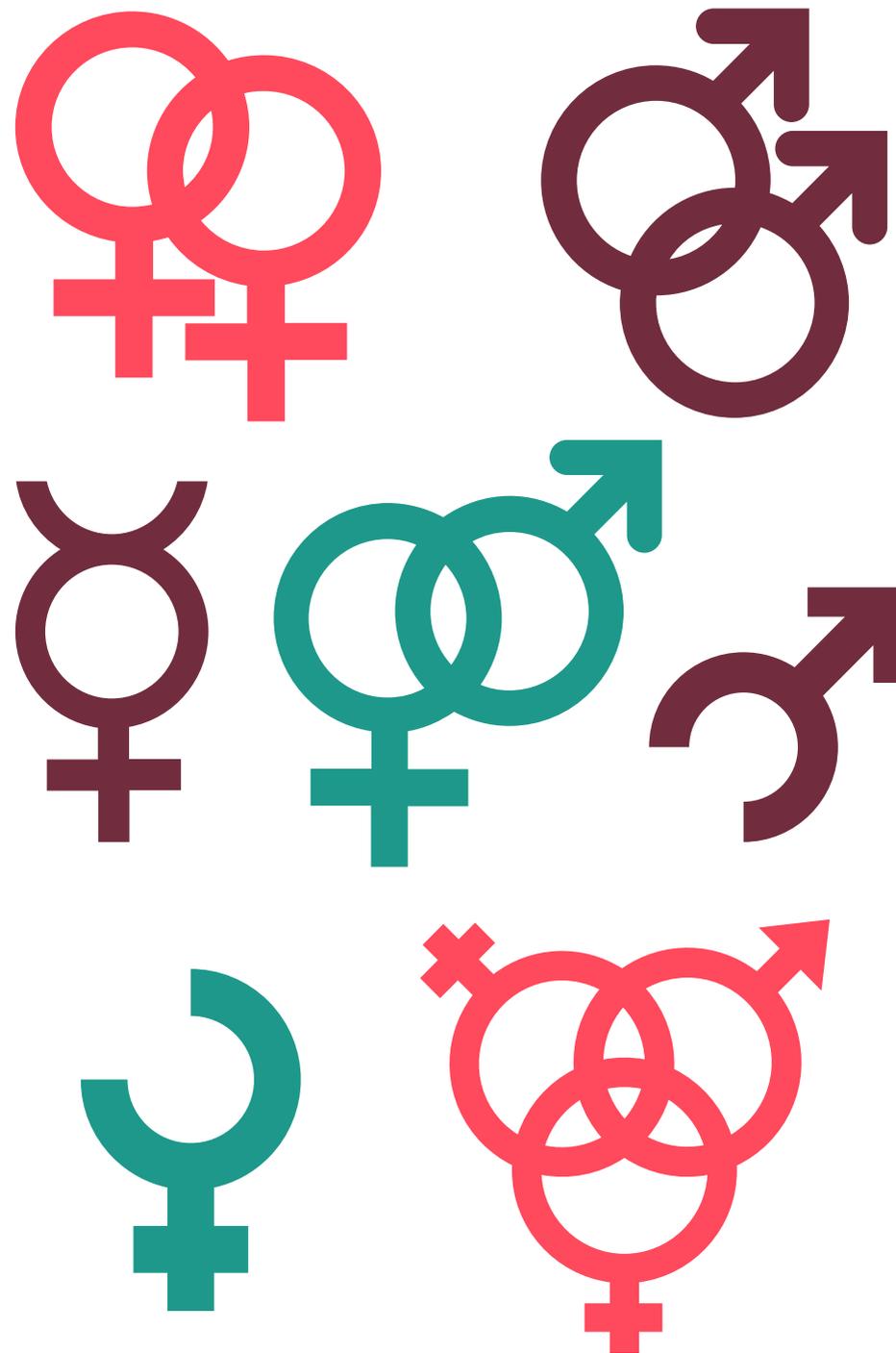
**A. An employer should avoid questions about the relationship between you and the person nominated as your next-of-kin or emergency contact.**

Ideally next-of-kin information should be obtained when employment commences rather than at the earlier stages of the employment process.

**Q. Should I remove information from my CV that may disclose that I'm a lesbian?**

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

Some organisations collecting EEO data through the workplace profile information may ask about sexual orientation to ensure the pool of candidates are as diverse as possible. Employers should avoid asking questions or seeking information about the sexual orientation of job applicants unless they are collecting anonymous statistical data for EEO reporting or for profiling who responds to their job applications. If an employer is collecting data for such purposes, it should ideally be collected on a form that is separate from the job application.





## Speaking English:

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

**A. The advertisement could read that the job requires the successful applicant to have spoken English at a specified level.**

An employer could indicate in the advertisement that the shortlisted candidates would undergo an oral competency test. This would provide an objective measure of oral competency. Only a few jobs will require this level of fluency and oral presentation skills.

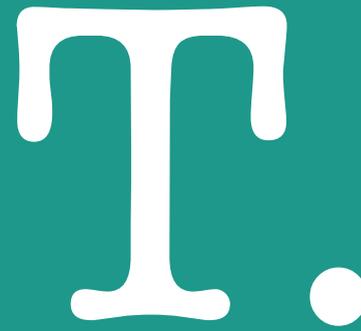
**See also:** Migrants

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

**A. No, provided you can be clearly understood.**

A New Zealand accent is unlikely to be considered a genuine occupational qualification except in rare circumstances.

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



## Tattoos:

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

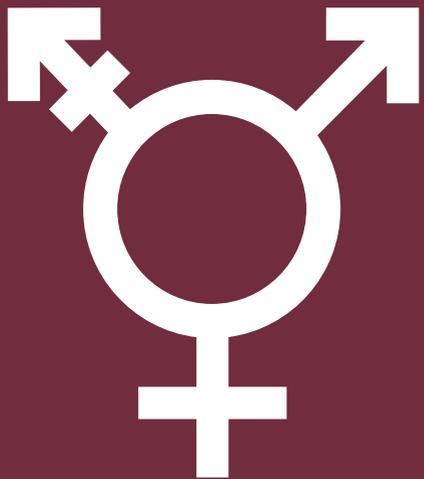
**A. A policy banning tattoos is not unlawful. However, when enforcing such a policy an employer needs to be aware that if the tattoo has religious or ethnic significance a complaint of indirect discrimination could be made.**

**Q. Am I protected by the Act if I suspect my moko was the reason for not getting the job?**

**A. Yes, if you suspect that having a moko was the reason for not getting a job you can make a discrimination complaint.**

**Trade union:** See Union membership





## Transgender | Trans people:

Q. Should I disclose in the interview that I'm transgender?

**A. In most cases it's solely your decision whether you disclose you're transgender, as your sex or gender identity has no bearing on your ability to do the job.**

In some very limited circumstances, it is legal to employ only a woman or a man for a particular position; ie being female or male is a genuine occupational qualification. In these infrequent situations, some transgender people may need to provide evidence about their sex.

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

**A. If previous name details are required from all applicants, for a specific purpose, then you can ask a transgender applicant to provide the details.**

As disclosure of the information might have significant additional implications for a transgender job applicant, reassurance should be given that the information will only be used to verify identity and not for any other reason.

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

Information about human rights and transgender/trans people can be found at: [hrc.co.nz/transgenderinquiry](http://hrc.co.nz/transgenderinquiry)



## Treaty of Waitangi:

Q. Can I be asked if I have proven understanding of, and commitment to, the principles of the Treaty of Waitangi?

**A. It will depend on the particular job you are applying for.**

In some cases having an understanding of the principles of the Treaty of Waitangi will be a requirement of the job and genuine occupational requirement. In other cases, given the place of the Treaty of Waitangi in New

Zealand's constitutional principles, an understanding or knowledge of it may well be necessary and desirable. This is different from requiring a commitment to the Treaty or making a job conditional on commitment to it. Information about the Treaty of Waitangi can be found at: [www.waitangitribunal.govt.nz/treaty/](http://www.waitangitribunal.govt.nz/treaty/)

# U.

## Union membership:

Q. Does the Act cover being a trade union member?

**A. No, the prohibited grounds of discrimination in the Act do not cover being a member of a trade union.**

From time to time proposals have been made to include trade union activity as a prohibited ground of discrimination but they have not made it into the Act. There is case law in New Zealand suggesting that if there's a clear connection between the government and its policies

and the activity being undertaken by the union or its members, the activity amounts to expression of a political opinion. Discrimination on the grounds of political opinion is prohibited by the Act.

More information about union membership is covered by the Employment Relations Act <http://bit.ly/unionsera>



## Unsuccessful applications:

**Q. What are my rights to access information if I'm an unsuccessful job applicant?**

**A. Under the Privacy Act an unsuccessful applicant has the right to personal information, which would include any notes written during the interview by a panel member.**

Best practices for the interview panels include:

- asking all applicants a standard set of questions
- conducting standard work tests for all applicants
- developing scoring templates set against objective criteria drawn from the job description
- panel members systematically using templates
- retaining all notes made by panel members until after the successful applicant starts work.

**See also:** Privacy

# V.

## Volunteers:

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

A. Yes, the definition of employee in the Act covers volunteer/unpaid workers.

**Work/life balance:** See Flexibility



# Y.



## Young people:

Q. How can an employer attract younger job applicants?

**A. Traditional methods of job advertising like the situations vacant pages may not be read by people aged 16-24 years. Young people are likely to find out about jobs from friends, school careers advisers, community notice boards and websites.**

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

**A. Yes, an employer can reject an applicant on the basis of inexperience if experience is a core competency for the job.**

However, no employee aged 16 or over can be rejected solely on the basis of age. All new job applicants, regardless of age, need time to become familiar with their role. Good performance at work is not age dependent.



## Equal Employment Opportunities and Pre Employment Information Gathering.

Developing a good employer policy and an Equal Employment Opportunities (EEO) programme in your organisation helps ensure that job advertising, shortlisting, interviewing of candidates and selection policies are consistent, fair and non-discriminatory. EEO practices and programmes are one way an employer can remove discriminatory employment practices. The implementation of workplace EEO policies can be effective in preventing unlawful discrimination under the Human Rights Act 1993. They may also provide a defence, for example in sexual harassment cases, against liability for an employer's discriminatory practices.

**The Human Rights Commission has developed comprehensive good-employer guidance for both private and public sector organisations. It is available here: [www.hrc.co.nz/good-employer-guidance](http://www.hrc.co.nz/good-employer-guidance)**

Recruitment, selection and induction comprise one of seven elements of the employment cycle that the Commission asks employers to consider when developing good employer and EEO plans. Collecting data about the workforce is also supported as long as it is relevant to EEO. Employers may wish to gather information regarding the race, ethnicity, gender or age of applicants for EEO purposes. An organisation may, for example, want to check whether applicants from diverse backgrounds have applied for a job. This will help provide evidence that they are advertising in the relevant media to attract the widest possible potential talent pool. Where such information is required, it should be made clear to applicants that EEO information will not be used to discriminate against them. Employers should distinguish clearly between questions which will be used in job selection and questions put for EEO purposes. EEO information should be collected on a voluntary basis. Ideally, EEO questions should not appear on the application form but should be collected separately and anonymously.

# Appendix 1:

## THE PROHIBITED GROUNDS OF DISCRIMINATION IN THE HUMAN RIGHTS ACT 1993 Section 21(1)

**For the purposes of this Act, the prohibited grounds of discrimination are:**

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

- |   |  |
|---|--|
| (i) For the purposes of sections 22 to 41 and section 70 of this Act and in relation to any different treatment based on age that occurs in the period beginning with the 1st day of February 1994 and ending with the close of the 31st day of January 1999, any age commencing with the age of 16 years and ending with the date on which persons of the age of the person whose age is in issue qualify for national superannuation under section 7 of the New Zealand Superannuation and Retirement Income Act 2001 (irrespective of whether or not the particular person qualifies for national superannuation at that age or any other age) | (ii) Being a recipient of a benefit under the Social Security Act 1964 or an entitlement under the Injury Prevention, Rehabilitation, and Compensation Act 2001. |
| (ii) For the purposes of sections 22 to 41 and section 70 of this Act and in relation to any different treatment based on age that occurs on or after the 1st day of February 1999, any age commencing with the age of 16 years   | (1) Family status, which means:  |
| (iii) For the purposes of any other provision of Part 2 of this Act, any age commencing with the age of 16 years.   | (i) Having the responsibility for part-time care or fulltime care of children or other dependants  |
| (j) Political opinion, which includes the lack of a particular political opinion or any political opinion.  | (ii) Having no responsibility for the care of children or other dependants   |
| (k) Employment status, which means:   | (iii) Being married to, or being in a civil union or de facto relationship with, a particular person   |
| (i) Being unemployed  | (iv) Being a relative of a particular person.  |
|   | (m) Sexual orientation, which means a heterosexual, homosexual, lesbian, or bisexual orientation.  |
|   | Section 21(2) Each of the grounds specified in subsection (1) of this section is a prohibited ground of discrimination, for the purposes of this Act, if:        |
|   | (a) It pertains to a person or to a relative or associate of a person, and   |
|   | (b) It either:   |
|   | (i) Currently exists or has in the past existed  |
|   | (ii) Is suspected or assumed or believed to exist or to have existed by the person alleged to have discriminated.  |

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The Human Rights Commission was established in 1977 and works under the Human Rights Act 1993. The Commission's purpose is to promote and protect the human rights of all people in Aotearoa New Zealand. We work for a free, fair, safe and just New Zealand, where diversity is valued and human dignity and rights are respected.

The information in this booklet is only meant to give general guidance. It's not intended, or should be relied on, as a substitute for legal or other professional advice. If needed, we recommend that you get independent legal advice. The information contained in this booklet may be amended from time to time.

First published in July 2016.

## Get in touch:



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**Website** [hrc.co.nz](http://hrc.co.nz)



**We're here to help.**

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**Have a discrimination complaint? Need more information?**

**Call** 0800 496 877, **Email** [Infoline@hrc.co.nz](mailto:Infoline@hrc.co.nz), **Website** [hrc.co.nz](http://hrc.co.nz)