



How to Hire

GUIDE FOR EMPLOYERS



Who should read this?

Employers recruiting and hiring new employees, whether they are full-time, part-time, permanent, casual or fixed-term employees.

Why is it important?

This guide is designed to help employers find the right person for their business and provide a base for building a good employment relationship.

How to use this guide

This guide is designed to provide employers with information about good practice when recruiting and hiring employees.

The Employment Relations Act 2000 highlights the importance of “good faith” behaviour as the foundation of the employment relationship, and the value of having the rights and obligations of both employers and employees clearly set out.

From the very beginning, it is important to set an environment that creates good faith relationships. Acting in good faith is common sense and is critical during the hiring phase.

Job applicants and employers need to communicate openly and honestly with each other to avoid disappointing expectations, and other problems later on.

Government policy and legislation in a wide range of areas, including immigration, health and safety, human rights, skills development, disclosure and privacy, may also need to be considered during the hiring process. This guide primarily focuses on employment relations, raises key issues in each of these other areas, and points you towards sources of more detailed information.



If you don't follow all the suggestions included here, it does not mean you are necessarily in breach of the Employment Relations Act or other relevant legislation. There is no "one way to hire", but the information is designed to help avoid some common problems.

Information is grouped around the three stages of the hiring process, and each stage has a checklist of key actions. Where these elements are a legal requirement, the text is boxed.

The stages of the recruitment process are:

- **describing and advertising the job**
- **receiving applications through to interviewing**
- **selecting and appointing.**

Throughout this guide, there are references to resources that you can obtain from the Department of Labour for use in the recruitment and induction process.

The guide ends with a checklist to ensure that the first day of work goes smoothly for you and your new employee.

A. Planning for the process

A mistake as you start your planning can be costly and can undermine the employment relationship that will eventually be established.

In part, this is because the good faith requirements set out in the Employment Relations Act and other legislative requirements can impact on each stage of the hiring process:

- attracting suitable applicants
- interviewing
- choosing the employee
- documenting and making the offer
- finalising the agreement
- commencing the relationship.

You should therefore plan to ensure that:

- you have a clear idea of all the costs associated with employing someone – a checklist is available on the Department of Labour’s website at www.ers.dol.govt.nz/publications/pdfs/checklist_employment_costs.pdf or by phoning 0800 20 90 20.
- the genuine requirements and skills needed for the job are identified in advance and communicated clearly to job applicants
- the privacy and confidentiality of applicants and the process are maintained throughout
- advertising, selection and hiring decisions are made fairly, and not on unlawful discriminatory grounds
- communications with applicants are clear, and if there are any areas of uncertainty, you should take time to address and clarify them with the applicants
- offers of employment are in writing
- the bargaining surrounding a job offer is fair and complies with the requirements of the Employment Relations Act
- there is an induction process that gives the employee a fair chance of reaching the expected standard of performance.

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B. Describing the job

You are required, as a minimum, to describe the work to be undertaken in your employee's employment agreement.

However, you are more likely to find the best person if, as you advertise and interview, both you and the applicants have a clear idea of:

- the job to be done
- the hours and place of work
- the personal attributes, skills and qualifications expected
- the training and development you will be providing.

Equally, before you begin the recruitment process, it is worthwhile considering what flexibility you might have in any of these areas to meet the genuine requirements of a suitable employee who, for example, has a disability or is caring for dependent children or a dependent relative.

If this is the first time you have filled the position, this is the time to consider the needs and shape of your business. If you are replacing an existing employee, it is also worthwhile reviewing the present arrangements and making certain that they still fit your needs.

Questions you can ask yourself about the job:

- What made you establish the position?
- Is there a person undertaking the work now? If there is, how would they describe their responsibilities?
- Do they have all the necessary skills for the job?
- Are the skills you needed in the past the ones you need to meet the continuing/future needs of your business?
- Will the person work alone or as part of a team?
- What are the tasks that have to be undertaken?
- What are the key competencies for those tasks?
- Is there specialist equipment or knowledge involved in the tasks?
- How will the person be supervised, and are there responsibilities for supervising others?
- Are there additional tasks or competencies that could be required of the employee that should also be explained?
- Who are your customers, and what are their expectations of your business and this position?
- Are there any legal requirements for the job?

D. A full-time, part-time, permanent, casual or fixed-term employee?

Having identified the needs of your business, it is important to be clear, before advertising a position, what is essential to you in the employment arrangements you plan to make and what would be ideal.

Your legal requirements and ability to recruit may be affected by these decisions.

Legal requirements:

In the employment agreement you eventually agree with your employee, you must be clear about the arrangements you have made for hours of work, and if, at a later stage, you wish to change those arrangements, it is necessary to do that by agreement with your employee.

Most minimum conditions of employment are consistent across all forms of employment, although there are some other factors to consider:

- There are additional requirements when entering into a fixed-term agreement. Fixed-term agreements can only be offered where there is a genuine reason for the fixed-term. More information about fixed-term employment is available on the Department of Labour's website at www.ers.dol.govt.nz/relationships/fixed.html or by phoning 0800 20 90 20.
- Many people are referred to as casual employees when they are actually fixed-term or part-time workers. Genuinely casual employees are those who work only intermittently or on an irregular basis, and some different rules may apply. More information about who is an employee is available on the Department's website at www.ers.dol.govt.nz/relationships/employee.html or phone 0800 20 90 20.
- Special provisions for the payment of holiday pay apply for some fixed-term employees and for employees undertaking genuinely casual work. More information about holiday payments for some fixed-term and genuinely casual employees is available on the Department's website at www.ers.dol.govt.nz/holidays_act_2003/pay_as_you_go.html or phone 0800 20 90 20.
- There are additional requirements if your employee is being employed on a trial or a probation period. Further information is available on pages 32-33.

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E. Hours of work

Employees in different industries and types of work have different expectations regarding hours of work.

Your ability to recruit can be improved or undermined by the extent to which your expectations on hours of work reflect practice in your industry.

This is particularly the case where employees have to balance external responsibilities, such as study, childcare or travel, against the needs of the job.

Before advertising and developing a proposed employment agreement, you need to be clear whether the employee is employed to work:

- set hours daily and/or weekly at an hourly rate
- on an annual salary reflecting an expectation of hours worked over the year, but not necessarily with set daily hours
- as required, with or without minimum hours of work
- on a regular roster or cycle of hours
- with a requirement for regular or occasional overtime, either as required by the employer or with agreement between the employer and employee.

The choice you make can also influence where and to whom you advertise the work. For example, employees relying on public transport may not be able to travel easily outside normal business hours and, if work is for short or broken periods of time, local rather than more distant candidates are more likely to be interested.

Examples of hours of work arrangements frequently provided in employment agreements can be found in the Department of Labour's web-based employment agreement guide at: www.ers.dol.govt.nz/relationships/builder/guide.asp, and you can develop a draft employment agreement by using our Employment Agreement Builder at www.ers.dol.govt.nz/relationships/builder/index.asp

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F. Place of work

You are required to include details of the place of work in your employment agreement with an employee.

In advertising or offering a job, you should make it clear whether the person will always be working in one place, will be required to work at a set number of places, or will work at different sites on a regular basis.

For some types of work, you might also like to consider whether the employee could undertake some or all of their duties at home if he or she wished – this can sometimes provide flexibility for people with family responsibilities and may make it easier to recruit.

G. Personal attributes

Having defined the job, you should then describe the personal characteristics you value and what the job requires – sometimes called a “personal profile”. This can often be put quite simply, but must be clear and easily understood. Make sure the characteristics you identify are genuinely required for the job, and that they do not reflect discrimination.

Issues a personal profile can cover are:

- specific needs of your business, such as the way you require people to relate with other employees and customers
- the contacts or networks the employee may need to work with
- language or cultural knowledge
- fitness or physical requirements
- prerequisites that may be appropriate, such as previous work experience, literacy levels, computer skills, driver’s licences and recognised qualifications.

A checklist for a personal profile is available on the Department’s website at www.ers.dol.govt.nz/publications/pdfs/checklist_personal_profile.pdf or phone 0800 20 90 20.

As you develop the profile, remember that it should reflect the genuine needs of your business. Setting requirements out of habit (for example, you have always used a school leaver for this job, or the previous employee had these qualifications so the new employee requires them) may both reduce the range of people who apply for the job and open you up to accusations of discrimination.

Human rights legislation makes it illegal to discriminate in employment against a number of groups. Details of these requirements, exemptions from them, and advice on how they relate to recruiting are on the Human Rights Commission website: www.hrc.co.nz



H. Skills and qualifications

A related but separate issue is the qualifications the job requires and the training you are able or willing to provide for the successful applicant.

Although providing training involves costs for an employer, it can also be an investment that ensures employees can meet the needs of the job and progress over time.

There are a much wider range of qualifications and on- and off-the-job training available than in the past. Also, with increased immigration, it can be difficult to assess the value of a qualification.

If you wish to understand the nature of existing qualifications, or include an appropriate qualification in the personal profile, you can obtain advice from:

- the relevant Industry Training Organisation (ITO) – contact details are available on www.itf.org.nz
- Career Services on www.kiwicareers.govt.nz
- the New Zealand Qualifications Authority on www.nzqa.govt.nz

If you are prepared to provide training towards a qualification for the employee, you should consider whether there are entry or prior learning requirements for that training, and include that information in the personal profile.

Regardless of other skill requirements, you should consider the level of literacy and numeracy required for the job, or for the training you will be requiring the employee to undertake.

Where training is expected to occur on the job, it is important to ensure these requirements are realistic and that you have the time and people to deliver the training.

Alternatively, the costs, availability and ability of an employee to participate in external training need to be fully investigated before commitments are made.

An employer's failure to provide necessary training could later be used by the employee to respond to criticisms about his or her performance.

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I. Workplace character

Every workplace has a character or style.

When recruiting, you should consider what the character of your workplace is, and whether that character is the best for your business.

It is easy for cultures to develop that are taken for granted, but which aren't the best for you or a new employee.

The job description and personal profile should reflect the reality of your workplace. When you have designed both, if there is clearly a mismatch, you need to consider whether the job description and the personal profile or the culture should change.

Examples could be:

- To what extent do teams work as a group or is there a supervisor and the rest do what they are told?
- What level of formality is expected? Do you operate on a first name basis or is it a hierarchical organisation?
- Are people expected or encouraged to show initiative, or do you expect them to work by the book?
- Is it a vibrant exciting workplace where diversity is valued, or are people expected to conform?

No one culture is right or wrong, as long as the culture that is established does not:

- reduce your ability to recruit eligible workers
- create an unsafe working environment
- lead to decisions that discriminate without you being aware of it.

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J. Attracting suitable job applicants

How you attract the best applicants depends on the job, how much money you are able to spend on advertising, and how much time you have.

Options include:

- considering your existing employees – there may be someone who is ready for a promotion or who wants a new role, and advertising the role internally is a good way to find out
- engaging a recruitment agency – this can appear costly, but an agency can reduce the amount of time you are required to spend reviewing and short-listing applications, and can help you clarify your needs, appropriate pay levels and levels of experience available and required
- using the Work and Income's free service, which matches qualified unemployed people to the jobs that employers list with them
- targeting advertising in industry journals, magazines and websites
- contacting an Industry Training Organisation (ITO) or training establishment that deals with workers in your industry
- developing a relationship with your local secondary school, possibly through providing work experience opportunities for students
- considering relationships with, or notice boards at, local community groups or meeting places
- advertising in daily or community newspapers and other media, which can often advise on circulation or audience numbers and strategies for reaching target audiences
- directly approaching potential applicants, as long as you take care not to encourage an employee to break any employment obligations, including the need to give the correct period of notice and to comply with restraint-of-trade clauses

If you are considering advertising overseas, contact the Department of Labour's Immigration Service (www.immigration.govt.nz) for information about visas and permits.

When you prepare and publish an advertisement, you retain responsibility for what is said, and you need to make sure that what is said is accurate and not discriminatory.

It is also important to consider whether there are any procedures that must be followed in making a new appointment.

For example, many employers in the public sector are legally required to notify a vacancy in a way that ensures that suitably qualified applicants are aware of the vacancy, and are then required to appoint the applicant best suited to the position.

Some private sector employers may have agreed to certain hiring obligations in their collective or individual employment agreements.

A. Application forms

Application forms can be used in three ways:

1. Your job advertisement can ask people to apply for one, which can often be provided along with the job description and personal profile.
2. You can send an application form to applicants that you have short-listed before you make the final selection of applicants to interview.
3. You can provide an application form either when you arrange the interview or when people arrive for the interview.

While providing and dealing with an application form can add to the time involved, it does have a number of advantages:

- It provides you with the information you require to help with your selection.
- It provides an opportunity for the applicant to indicate how and where they wish to be contacted.
- If certain prerequisites are important, such as university or polytechnic grades, or trade qualifications, the form can expressly request the inclusion of this information. If this information is important, it is well worth requesting that the applicant provides certified photocopies of original transcripts from the institution in question.
- Other important questions can be included in the application form, such as asking what responsibilities an applicant had in previous jobs, and how they are relevant to the job you are trying to fill.
- It can be used to obtain details of applicants' residency status and, where appropriate, the nature of work permits held.
- The form can include a declaration for applicants to sign, acknowledging that they have provided all information relevant to the job and have not withheld any significant information. (In addition, it is sensible to draw attention to this with each applicant you interview, so that they understand the importance of the declaration. The presence of the declaration and the fact you have highlighted its importance can be relevant if any dispute about non-disclosure or misrepresentation arises later on).
- The form can include a section for the applicant to sign to authorise you to contact referees and, where it is a requirement of the job, to conduct a security check to ascertain whether the applicant has criminal convictions.
- The form can explain key features of the hiring process being followed, for example, that the terms of any offer of employment will be those recorded in the written job offer. This can help to avoid problems with applicants later stating that binding verbal assurances were given during the hiring process.

C. Letter on receipt

It is good practice to write confidentially to applicants confirming receipt of their application and advising what the next step in the process will be (for example, short-listing those to be interviewed).

Communicating clearly with applicants in writing avoids the risk of later misunderstandings.

D. Setting times and places for the interview

Conducting interviews can be both time consuming and costly. In setting up the interview, it is important to consider:

- how many interviews you should undertake
- the best time for you and the applicant (for example, if the job is likely to be appealing as an after-school job, you need to either hold interviews after school hours, at a time that also gives the applicant enough time to travel from school, or hold the interviews at the weekend)
- the length of time you need to interview the applicant and the break you might need between interviews
- respect for privacy and confidentiality, for example, you may need to schedule interviews in a way that ensures applicants do not learn each other's identity
- providing enough notice to enable the applicant to arrange coverage for their existing job or childcare, if necessary
- travelling times, if you are recruiting from outside your local area
- selecting a place where you won't be interrupted and both you and the applicant can talk comfortably.

When setting up interviews with applicants, be careful to maintain their privacy and follow any requests regarding contact that they have included in their application.

Also make clear to the interviewee any information, proof of experience or preparatory work that will be required at the interview, for example, a tradesperson's certification or designer's work portfolio.

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E. Deciding what type of interview is best

It is important to apply consistent criteria for determining who and how you interview.

You first need to identify the best interview method to test against the criteria you established for the job.

Approaches may include:

- a one-on-one discussion
- an interview panel
- a written project or examination
- a workshop environment
- skills and/or attribute testing
- a mix of the above.

The approach you take should be applied uniformly to all applicants you interview to ensure consistency, and applicants should be advised of this when you set up the interview.

F. Deciding the information you need

To make sure that the key information you require is not overlooked in respect of any applicant, it is wise to write out in advance the questions that each applicant will be asked.

Ensure that questions are open ended. You will not gain a feel for the applicant if most questions can be answered “Yes” or “No”, and they won’t have an opportunity to show their interest or knowledge.

Prepare in advance so you can follow the same procedure whether the interview is formal or more spontaneous, such as when a person rings up asking for work.

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G. Understanding the information that the applicant may need

When you appoint someone to the job, your comments at the interview may be relied upon at a later time, so be clear and concise.

To avoid making unintended commitments or assurances, it is important to have developed answers on:

- the process to be used after the interview
- the likely range of employment conditions.

Think carefully before responding to any special requirements an applicant may raise, such as car parking needs or variations in normal hours. Often being flexible can allow you a greater choice of applicant.

If you reply in the negative, you should explain your reasons, particularly if the rejection could be seen as discrimination against a particular disadvantaged group.

If you make a positive commitment to meet the request and the applicant is successful, then reflect those arrangements accurately in the draft employment agreement when you offer the applicant the job.

H. Assessment tasks

It is sometimes appropriate to ask job applicants to perform tasks in order to assess whether they are suitable for a job. This can be helpful where the requirements of a job differ from the applicant's previous work experience, or to help you to make comparisons between the skills of different applicants. If assessment tasks are to be used, they should be of limited duration and be a genuine assessment of the applicant's capabilities to perform the key tasks of the job. You should let applicants know in advance the type of assessment that you will ask them to undertake.

Notes



I. Contacting referees

It is often crucial to follow up referees. Such inquiries can provide invaluable information and can also be used to test your assessment of an applicant.

The time for contacting referees can be:

- when finalising a short list
- when considering the performance of applicants at the interview
- when a preferred applicant has been selected, but before any offer is made.

These checks should also be consistently applied in light of the decision you have made on checking references. The following suggestions can help to avoid common pitfalls:

- Consider how many applicants' references you need to check. For example, you may decide that reference checks are needed only for short-listed applicants.
- Under the Privacy Act, it is advisable to specifically obtain the applicant's consent, preferably in writing, to your obtaining information from referees or other sources, and the uses to which the information will be put. A straightforward way to obtain this consent is to include it in an application form that each applicant can fill out and sign.
- Other requirements of the Privacy Act that also need to be complied with include ensuring that the collection of the information does not intrude unreasonably on the applicant's personal affairs.
- Care needs to be taken with any pre-employment health screening. For instance, the collection of this information for the purposes of discriminating against applicants with a disability, where the relevant exception in the Human Rights Act does not apply, would be unlawful. Seeking information that is not relevant to the proper and safe performance of a job could also be in breach of the Privacy Act.

When obtaining a reference, ask yourself what information is important and relevant. Prepare in advance for each referee and, as with interviews, ask concise but open-ended questions that require the referee to exercise judgement, rather than say "Yes" or "No".

You may also wish to consider the procedures and timescales of industry registration bodies, where certification or registration is a requirement of the position, and whether this is a job where checking prior convictions is appropriate.

If you require further information about privacy matters, see the Privacy Commissioner's website: www.privacy.org.nz or www.privacy.org.nz/information-for-employers/

J. Employment agreements

Before the interview, it is worthwhile considering the employment agreement that you would be willing to offer the applicant if you end up making him or her an offer of employment.

Three situations can arise:

1. There is a collective agreement in your workplace covering the job you are offering, and the person you hire is a member of the union that negotiated the collective agreement with you.
2. There is a collective agreement in the workplace covering the job you are offering, and the person you hire is not a member of the union.
3. Employees in the position advertised or all positions in your workplace are employed on individual employment agreements.

If the first situation applies, the base agreement that you offer the employee is clear – they must be offered the conditions in the collective agreement.

If the second situation applies, the employee must receive the conditions in the collective agreement for the first 30 days of employment. If, during or at the end of the 30 days, they join the union, they become covered by that agreement. If they choose not to join the union, you can negotiate a new individual employment agreement with them, varying the terms and conditions as agreed.

In either circumstance, you can both agree to additional conditions that are not inconsistent with the collective agreement, such as specific school holiday arrangements, or agreed start or finishing times that meet special transport or childcare needs.

If there isn't a collective agreement that covers the position, you will need to consider the total wages and conditions that you believe are appropriate for the job.

There are minimum legal rights that apply, which neither you nor your employee can agree to reduce.

Once you have met those requirements, the range of payment or conditions you are willing to offer is likely to be driven by:

- the profitability of your business
- the provisions other similar employers are offering
- the special circumstances in your region or area
- the availability of the skills in the industry
- your policy on retention and development of employees.

At the job interview, you may be asked about simple issues (the hourly rate) or more complex issues (your willingness to provide leave for the employee to undertake further training).

B. When to make the decision

It is not advisable to make a snap decision about offering an applicant a job during the course of an interview. Taking time to compare applicants and checking with referees will lead to better decisions.

When you make a selection decision, remember that, if a challenge is later taken by an unsuccessful candidate (for example, on the grounds of discrimination), documentation relevant to the appointment process and decision may have to be disclosed.

In the public sector, internal applicants may also have a more general right to challenge appointment decisions.

C. Deciding to appoint

Remember, you are not compelled to actually make an appointment. If the applicants are not of a suitable standard, or if circumstances change during the recruitment process and you do not now need a new employee, you can simply decide not to offer any of the applicants a job.

D. References

How to deal with references is covered on page 22 of this booklet.

Notes



E. Making an offer

When you have decided on your preferred candidate, the next step is to formally offer them the position and also offer them an employment agreement.

This should be done in writing, but often an initial telephone call is convenient to indicate that you are about to make the offer.

From the first contact, whether by phone or letter, you are effectively commencing the employment relationship, with all the legal protections around that relationship.

The process varies depending on whether there is:

- no relevant collective agreement in place
- a collective agreement covering the work to be performed, and the applicant is a member of the union concerned
- a collective agreement covering the work to be performed, and the applicant is not a member of the union concerned.

If there is a collective agreement in your workplace, it may be advisable to request information on union membership at the interview. However, you should take care to make it clear that the purpose of the question is to guide you in the process around any job offer.

If there is no relevant collective agreement that covers the work to be performed by the new employee, then you may enter into an individual employment agreement. In order to do this, you must:

- provide the job applicant with a written copy of the proposed agreement
- advise them that they:
 - are entitled to seek independent advice about the agreement and its terms
 - are invited to respond to the proposed agreement
 - have a reasonable opportunity to seek that advice. (What is reasonable will depend on the circumstances. It can be helpful to agree with the employee in advance how long they anticipate they would need in order to take advice.)

Draft letters that can be used as a guide are available on the Department of Labour's website at www.ers.dol.govt.nz/relationships/letters.html or phone 0800 20 90 20.

The applicant may respond to the offer and proposed agreement by:

- accepting your offer
- rejecting your offer
- indicating they wish to accept the offer but wish to discuss changes to the proposed individual agreement.

You are required to consider any changes they wish to negotiate, and respond to their suggestions.
 You are not required to agree to any or all of their proposals.

Flow chart of the hiring process





F. Conditions in individual employment agreements

When an individual employment agreement is to be offered, it must be in writing. This ensures that there is a clear and mutual understanding of the terms and conditions on which employment has been offered, and can help to prevent later disputes.

The Employment Agreement Builder ([see www.ers.dol.govt.nz/relationships/builder/index.asp](http://www.ers.dol.govt.nz/relationships/builder/index.asp)) can guide you through developing your employment agreement.

Individual employment agreements are required to contain the following core terms:

- the names of the employee and the employer
- a description of the work to be performed
- an indication of the place and hours of work
- the wages or salary payable
- the right of the employee to receive at least time-and-a-half if they work on a public holiday
- a plain-language clause explaining the services available for resolving employment relationship problems.

For most employees, there must also be a clause covering the rights of the employee on the sale or transfer of the business, or if work is contracted out.

Some employees undertaking work such as cleaning and food catering have different rights in this area. Information about those employees and their rights is available on the Department's website at www.ers.dol.govt.nz/factsheets/restructuring_protection_specified.html or phone 0800 20 90 20.

Individual agreements cannot contain terms that are unlawful, for example:

- a wage rate that is less than the relevant minimum wage
- annual holiday, public holiday, sick or bereavement leave entitlements less than an employee's rights under legislation
- anything that removes an entitlement under the Employment Relations Act.

You are also required to tell the employee about their rights under the Holidays Act 2003. This requirement can be met by including these in the employment agreement. It is important that these rights can be clearly understood by the employee.

The employment agreement guide (which is at www.ers.dol.govt.nz/relationships/builder/guide.asp) includes examples of terms of employment that are typically dealt with in an agreement, such as:

- leave entitlements
- meal and rest break entitlements
- how the employee's salary or wage rate is calculated, and when salary/wage reviews will be carried out

- how the wage or salary will be paid (such as by cheque or direct credit) and when (such as in arrears or in advance)
- what other benefits the employee is entitled to, such as a tool allowance, a clothing allowance, medical insurance or superannuation
- what training will be provided
- health and safety obligations of the parties
- notice periods (for resignation, redundancy and the like)
- trial or probation periods
- variation provisions
- confidential information and restraints applying after termination.

It is important to ensure that the agreement records all the agreed benefits that the employee will be entitled to. If any assurances were given in the interview stage, then it is also wise to clearly record those assurances in the written agreement.

G. Offers and employment agreements for part-time, casual and fixed-term employees

i. Part-time jobs

The process of offer and consideration of employment agreements for part-time jobs has to comply with the same requirements that apply to full-time employment. The obligations on employers that are discussed in the previous sections therefore apply.

ii. Casual jobs

The process of offer and consideration of employment agreements for casual jobs has to comply with the same requirements that apply to full-time employment. Casual employees generally have similar minimum employment rights as other employees.

In some circumstances, the expectation of the time available to consider and discuss a casual position will be less where the employment is immediate in nature or the employee has been employed previously for similar work.

Also, where the employee's employment is so irregular or intermittent that it is not feasible to provide for four weeks' annual leave, the employee can be offered holiday pay on a "pay as you go" basis. This needs to be explicitly provided for in the employment agreement, and the payment must be recorded separately in wage records at a rate of at least 8%. More details are on the Department's website at www.ers.dol.govt.nz/holidays_act_2003/pay_as_you_go.html or phone 0800 20 90 20.

iii. Fixed-term employees

The process of offer and consideration of employment agreements for fixed-term jobs has to comply with the same requirements as permanent employment. Fixed-term employees generally have similar minimum employment rights as other employees.

Additionally, a fixed-term individual employment agreement can be entered into only if you have genuine operational reasons based on reasonable grounds for seeking a fixed-term. Such reasons could include situations where:

- you require a replacement for another employee who is absent on long-term sick leave or parental leave
- the work in question relates to a one-off project
- the work is seasonal.

A clause outlining the reasons for and period of the fixed-term agreement must be included in the employment agreement.

Where the fixed-term agreement is for less than 12 months, the employment agreement can provide for annual holiday pay to be made on a “pay as you go basis” if the employee agrees. This needs to be explicitly provided for in the employment agreement, be no less than 8% of the hourly rate, and must be shown as a separate item in the employee’s pay slip. More details are on the Department’s website at www.ers.dol.govt.nz/holidays_act_2003/pay_as_you_go.html or phone 0800 20 90 20.

Failing to comply with requirements relating to fixed-term agreements could affect your ability to end the employment at the expiry of the fixed-term, by entitling the employee to treat the employment as continuing.

H. Offers including a trial or probation period

Trial periods

From 1 March 2009, employers who employ 19 or fewer employees will be able to employ new employees on a trial period of up to 90 calendar days.

Any trial period that you agree to with a new employee must be agreed to in good faith and in writing as part of the employment agreement. You and the employee must both bargain in a fair way about a proposed trial period. This includes considering and responding to any issues raised by the new employee.

You may only agree to a trial period with an employee if he or she has not previously been employed by you.

If you have concerns about the performance of an employee during a trial period, then you should raise them with your employee.

If any employment relationship problem arises during the trial period, or if the employee is dismissed, the employee and the employer can access mediation services.

An employee who is given notice of dismissal before the end of a trial period cannot raise a personal grievance on the grounds of unjustified dismissal. He or she may, however, raise a personal grievance on other grounds, such as discrimination or harassment or an unjustified action by the employer that disadvantaged the employee.

If you agree to a trial period with your employee, this does not affect his or her entitlements to holidays and leave.

Probation periods

Employers, including those who employ 20 or more employees, can agree to a probation period with new employees.

Employees during and at the end of their probation period have similar minimum employment rights as full-time employees.

The process of offer and consideration of employment agreements has to comply with the requirements for permanent employment when you are offering someone a position involving a probation period.

Any probation period that you agree to with a new employee must be agreed to in good faith and in writing as part of the employment agreement. You and the employee must both bargain in a fair way about the probation period. This includes considering and responding to any issues raised by the new employee.

If you wish to have the first part of the employment relationship as a probation period, you must record the probation period in writing in the employment agreement, including its duration.

Realistic expectations for the probation period should be clearly specified in writing either in the letter offering the position or in the employment agreement.

The use of a probation period does not affect the right of employees to be treated fairly and reasonably before any decision is made to dismiss them.

You should use the same processes and take the same care in managing the probation period that you would take if you were performance-managing a permanent employee with a performance issue.

Good performance should be recognised and recorded, but where an employee is not performing to the expectations you have clearly set out for them, you should discuss your concerns with the employee, and provide reasonable guidance and assistance to support their improved performance.

If you have promised specific training or support, this should be provided, especially where this is intended to help the employee to improve.

Any review or feedback commitments you make at the beginning of the probation period should be adhered to strictly.



I. Reaching agreement on an offer

When you have reached a final agreement on the appointment, you and the employee should both sign a final offer of employment and the employment agreement.

It is useful to include in the agreement an acknowledgement by the employee of the process and their understanding of it. An example of an acknowledgement is available on the Department's website at www.ers.dol.govt.nz/relationships/builder/index.asp or phone 0800 20 90 20.

J. Avoiding a claim of unfair bargaining

The Employment Relations Act seeks to ensure that new employees have the opportunity to discuss and agree their proposed terms of employment in a good faith environment.

An employee can take a claim against you if the bargaining that occurred over the terms of their individual employment agreement was unfair.

Unfair bargaining is defined as including situations where the employee:

- was unable to understand what the agreement said or meant because of a diminished capacity caused by, for example, age, sickness, mental or educational disability, a disability relating to communication, or emotional distress
- reasonably relied on your skill, care or advice, or that of your representative
- was induced to enter into the agreement by oppressive means, duress or undue influence
- was not given a reasonable opportunity to seek independent advice about the agreement before entering into it.

Maintaining a good record of the offer and acceptance, including correspondence and draft agreements, can assist you in responding to an employee's claim, should one occur.

If you and an employee are unable to resolve a problem about unfair bargaining through direct discussion, either you or the employee has the option of seeking assistance from the Department of Labour's mediation services or using a private mediator.

If the matter is not settled satisfactorily at mediation, there is the option of bringing a claim before the Employment Relations Authority.

If the Authority agrees that the bargaining was unfair, it can award compensation, and if it considers that any remedy other than variation or cancellation is inappropriate or inadequate, it may cancel or vary the agreement.

K. Dealing with unsuccessful applicants

You have a responsibility to handle information gathered about unsuccessful applicants in a confidential manner. This includes:

- letters of application
- curriculum vitae
- application forms
- interview notes.

You should either:

- retain the information in a secure place (if the applicant wishes you to do so in order to be considered for future vacancies), or
- return any items provided by the applicant and retain the rest, or
- retain the information securely for a set period, in case of follow up by the applicant, and then destroy it.

When you have made an appointment or decided not to fill the vacancy, it is good practice to confirm to applicants that their application was unsuccessful.

Notes



F. Induction

On a new employee's first day at work, and before they begin working, it is important to:

- Provide a full health and safety briefing, including hazards within the workplace and the workplace evacuation plan, and introduce the new employee to the health and safety representative.
- Provide any safety or other equipment required for the job prior to the employee commencing work.
- Inform the employee of any reporting requirements, such as who to contact in case of absence or in an emergency in the workplace.
- Clarify expectations regarding attendance and breaks.
- Outline your training, either on- or off-the-job, that the employee can expect. (It is good practice to record this in writing.)
- If the employment agreement contains a probation or trial period, this should also be discussed, and the support and guidance that the employee will receive during that period should be made clear.
- Outline when and how you will review and give feedback on performance.
- Introduce the employee to supervisors and co-workers, and the union delegate where there is one.
- Make available to the employee information on any in-house policies that apply to them or their job (such as internet and email policy, sexual harassment, reimbursement of business expenses etc.).
- Explain and, where appropriate, sign the employee up to any benefit schemes (such as medical insurance or superannuation).

Touch base at the end of the day to see if the employee needs any further information as a result of their first day's experience.

Notes





FOR MORE INFORMATION ON EMPLOYMENT RELATIONS
VISIT WWW.DOL.GOV.T.NZ



Department of Labour
TE TARI MAHI



newzealand.govt.nz