



Good practice, good business

A step-by-step guide to preventing discrimination in recruitment¹

1. Deciding on the recruitment process

Employers go about recruiting in different ways. Some may use in-house human resources personnel; others may hire a recruitment agent to short-list the applicants and help select the successful candidate.

In-house recruitment

If you are using your own staff to recruit to a position, you must make sure they are aware of their obligations under the law and are dedicated to a fair process.

If you do not take reasonable measures to prevent your staff from acting in a discriminatory way, you may be held responsible for their actions (see the fact sheet *Vicarious liability* at www.humanrights.gov.au/employers).

Recruitment agents

An employer that hires a recruitment agent to short-list applicants must make sure the agent is aware of their legal obligations when it comes to discrimination.

The same applies if you are a recruitment agent. While many employers are aware of their obligations, some may not be. As such, they may be at risk of unintentionally discriminating in the recruitment process. Because of this, recruitment agents have an important role in educating and reminding employers about their legal obligations.

Recruitment agents must not follow through with discriminatory requests from an employer that relate to a person's age, sex, race, disability or any other characteristic protected under state or federal anti-discrimination laws. If you are a recruitment agent and you receive a discriminatory request from a client, you must inform them that they are acting against the law. Let them know that they are putting themselves and you at risk of receiving complaints of discrimination. Remind the employer that they are unnecessarily limiting their options in the job market by not seeking a wider range of applicants.

Discuss the key requirements of the job with the employer, not irrelevant personal characteristics. Giving the employer information about what can and cannot be included in a job description is important. Providing the employer with a copy of this factsheet may also be useful.

¹ Based on material provided by the Victorian Equal Opportunity and Human Rights Commission. See *Guideline for the recruitment industry and employers* available at www.humanrightscommission.vic.gov.au.

As a recruitment agent, you too can be held responsible for the actions of your staff and consultants. Make sure you provide them all with information and training on equal opportunity principles. You also need to provide training to your consultants about how to deal with discriminatory requests for certain types of applicants and the consequences of acting on discriminatory instructions from employers.

2. Creating the job description

When you create a job description, you need to carefully consider the specific requirements of the job so that all potential applicants can clearly understand the skills and duties.

When you are clear about the genuine requirements of the job, you can identify what specific information you need from the job applicants and why you need it. This is important because it helps you to avoid seeking unnecessary and potentially discriminatory information from applicants when you develop selection criteria or prepare interview questions.

You must avoid using discriminatory language in the job description and avoid references to personal characteristics – such as age, race or sex – unless they are part of the genuine requirements of the job (see below: *Advertising the job*).

Write the job description using clear, easy-to-read language and make sure it:

- outlines the duties and skills required
- differentiates between ‘essential’ and ‘desirable’ criteria.

Consider including a diversity statement in the job description that encourages people from different backgrounds to apply, including Aboriginal and Torres Strait Islander peoples, people from culturally and linguistically diverse (CALD) backgrounds and people with disabilities.

3. Deciding on the application process

Some application processes may disadvantage certain people. Think about whether you need to adjust the process to accommodate the needs of applicants from different cultural backgrounds or people with disabilities.

Some strategies you can use to remove barriers for applicants include:

- simplifying requirements to respond to any selection criteria
- ensuring any online job portals are accessible and easy to navigate
- simplifying application procedures
- not requesting unnecessary information.

Examples of discriminatory application processes

Asking applicants to submit a comprehensive written statement on why they want the job might not be necessary for a cleaning position. It could also discourage people with limited English language skills from applying for the job.

Using only an online portal for applications could deter applicants with certain forms of disabilities from applying, as they may have difficulty accessing the system or navigating through the application process. Consider offering an alternative application process for these applicants.

4. Advertising the job

Discriminatory advertising is against the law, with fines applying to organisations and individuals.

A discriminatory advertisement can also limit the range of applicants you attract. It is in your best interests to cast the net as widely as possible to attract a diverse range of applicants.

A good advertisement will focus exclusively on the skills and abilities needed to perform the job. You may only mention personal characteristics – such as age, sex or race – if they are part of the genuine requirements of the job.

Your job advertisement should be written in a way that does not discourage some people from applying or imply that only certain applicants will be considered. For example, using phrases like ‘join a dynamic team’ or ‘seeking mature, experienced professional’ suggests that you will only consider applicants of a certain age. Ensure your advertisement does not include words, phrases or euphemisms that could be seen as restrictive or discriminatory.

Encourage as many suitable people as possible to apply. Depending on your organisation and the type of position, you may consider advertising internally and externally. Try using specialist media outlets and networks, as well as mainstream media, local newspapers, informal networks, community groups, industry groups and other forums.

As with the job description, consider including a diversity statement in the advertisement that encourages people from different backgrounds to apply, including Aboriginal and Torres Strait Islander peoples, people from CALD backgrounds and people with disabilities.

5. Short-listing applicants

Employers and recruitment professionals must have a clear understanding of the job requirements. Request and review information from all applicants about their capacity to perform the job based on their skills and experience.

Short-list applicants according to the requirements of the job. Do not allow personal bias, myths or stereotypes to influence your decision.

When short-listing applicants, make sure you:

- evaluate applicants using the selection criteria; matching skills, ability and experience with the job requirements
- are consistent with your decision-making

- clearly document your reasons for making decisions to help you to provide feedback to applicants later.

Example of discrimination when short-listing

The manager of a large hotel is responsible for recruiting a receptionist and engages a recruitment agency to short-list applicants. The manager tells the recruitment consultant that they don't want anyone with an accent in the role because it will affect their image.

The recruitment agency complies with the request and does not forward the details of Anna, a recently-arrived migrant from China with excellent English language skills and many years' experience working in large hotels. Anna may make a complaint of race discrimination if she felt that she was not put forward for the role because of her race.

The hotel may be liable for discrimination if it was found that Anna could have met the requirements of the job, regardless of her accent or country of origin. The recruitment agency may also be liable for assisting the discrimination.

6. Interviewing applicants

The interview is an important opportunity for applicants to talk about their suitability for the position and what they have to offer. Employers and recruitment professionals should carefully review and plan their interview process. Make sure all applicants have an equal opportunity to participate in their interview and explain why they are the best person for the job.

Preparing for the interview

The interview should be conducted at a venue that is accessible to people with disabilities.

Ask the interview candidate if they need any special assistance to participate in the interview. For example, a person who has a hearing impairment may need an Auslan interpreter or some other kind of adjustment to the interview process. You can ask these questions when you inform the candidate about what will happen at the interview. This will mean the candidate and the interviewer or the panel are fully prepared.

You should also develop a set of common interview questions that all candidates will be asked. These should focus on the skills and abilities they will need to do the job.

Example of discrimination at an interview

Richard is invited to attend an interview for a role working on a ship. It is a position for which he already has employment experience. On the phone, he asks if there are many stairs at the interview premises as he has slight mobility problems due to a muscular disorder. The person on the phone advises him that there are a few stairs and then goes on to say that there is probably no point interviewing him. Richard says he will be fine if there are only a few stairs.

Richard arrives at his interview the next day and has trouble entering the venue. Arrangements are made for him to attend the interview the next day at a different venue.

At the interview, the person interviewing Richard doesn't bring any notes and then goes on to speak on his mobile phone. Richard feels the company is simply going through the motions of conducting the interview and is not seriously considering him as a candidate. When he is unsuccessful in his application for the job, Richard makes a complaint of disability discrimination. He has worked well previously in a similar job and feels he would be a strong candidate for the role.

Myths and stereotypes

You should not allow myths and stereotypes to influence your decision when selecting an applicant – you could miss out on a potentially valuable employee. It is crucial to focus on the individual's ability to do the job, not on stereotypes about how 'someone like them' will behave.

For example:

- *Pregnancy*: Despite the progress that has been made with regard to sex and pregnancy discrimination, negative assumptions about employing women still persist, including that women workers who may become pregnant are a burden or are unreliable.
- *Age*: Mature-age workers can be subjected to a range of stereotypes when they are working or looking for work. These may include that they will be slow to learn new skills or technologies, will have trouble fitting in with a younger team or will retire soon. Younger workers can be discriminated against based on assumptions that they 'won't stick around' or that they have attitude problems.
- *Race*: Aboriginal and Torres Strait Islander people and people from CALD backgrounds may be disadvantaged in a recruitment process where assumptions are made about their behaviour due to their culture, leading to perceptions that they 'won't fit in' with the culture of the organisation.

7. Conducting the interview

When you are speaking with the interview candidate, do not make assumptions based on the person's behaviour or body language that may be the result of a disability or his or her cultural background. For example, a person who does not shake hands may be showing the appropriate level of respect or courtesy within their culture.

Ask all candidates the same set of common questions. This will help you to ensure you only seek relevant information from candidates about their skills and abilities, and how these relate to the genuine requirements of the job. When seeking further information, or asking

supplementary questions to particular applicants, be mindful of questions that may be invasive or potentially discriminatory.

Example of discriminatory interview questions

Cheryl attends an interview for a position in fashion retail. The interview panel engages in small talk with Cheryl at the start of the interview and one panel member asks Cheryl if she has any children. Cheryl says that she has two young children. If the employer relies on this information in deciding not to offer her the job, Cheryl could make a complaint of discrimination based on her parental status.

Example of seeking relevant information in a non-discriminatory way

You are interviewing candidates for a position that will require interstate travel. In this situation, you can ask applicants whether they will be able to perform the genuine job requirements – including interstate travel – without asking them potentially discriminatory questions about their family responsibilities or making assumptions about their childcare arrangements.

Seeking information from an applicant who is pregnant

You may, in certain circumstances, have to ask a candidate for information about her pregnancy to determine whether she will be able to perform the requirements of the job, or to assess any health and safety risks for the candidate or her unborn child in your workplace. These risks may only exist if there is a real likelihood that the work will pose a risk to her health and safety.

Seeking information from a candidate with a disability

You may, in certain circumstances, have to ask a candidate with a disability for information about the disability so that you can determine whether he or she will be able to perform the requirements of the job, or to assess any health and safety risks for the candidate or others in your workplace. You might also need this information to identify any adjustments you could make in the workplace for the candidate (see the *Disability discrimination* fact sheet at www.humanrights.gov.au/employers).

In the interview, do not focus on the condition or the diagnosis. You should instead seek to understand how the disability might affect the candidate's ability to meet the job requirements, what strategies he or she can use to achieve this and what adjustments you could make to the workplace. At the same time, always discuss the skills and experience that the candidate has to offer.

Avoid unnecessary or offensive questioning about the disability. Do not ask questions about the precise nature of the disability, how they acquired it or anything else that does not have a bearing on whether he or she can do the job.

Be aware that psychiatric disabilities and work-related injuries are also protected under the federal Disability Discrimination Act. Follow the same principles that apply to interviewing people with other disabilities when interviewing candidates with these characteristics.

Example of discrimination based on mental health

Sarah attends a job interview for a position as an accountant. At the interview, Sarah is told that the workload will be high and that the job can be stressful at times. When the interviewer asks Sarah whether she is confident she can handle stress, Sarah mentions that she had suffered from anxiety in the past. She goes on to say how she has spent time getting her condition under control, has learnt specific strategies to deal with stress and has performed well in similar jobs with tight deadlines. A week later, Sarah is told she has not been selected for the role. When she asks why, she is told 'we do not think you can handle the pressure'. Sarah has recent good experience in stressful roles, which the interviewer may have overlooked in making assumptions about the previous mental health issues Sarah disclosed. Sarah could make a complaint of disability discrimination.

Injuries and previous workers' compensation claims

It may be against the law to ask job applicants whether they have ever made a workers' compensation claim, how much sick leave they took in the previous year or other questions about health conditions that do not relate to their ability to perform the job.

As with other forms of disability, you may need to know about a candidate's existing illness or injury in order to determine whether he or she will be able to perform the requirements of the job, or to assess any health and safety risks for the candidate or others in your workplace. You might also need this information to identify any adjustments you could make in the workplace to assist the candidate to perform the role.

Example of discrimination based on a previous workers' compensation claim

A factory refuses to employ Bill because he has previously made a WorkCover claim. The employer could be directly discriminating against Bill if the decision was based on an assumption that he still has the disability or that he is more likely than other applicants to be injured at work.

8. Gathering information after the interview

After you have conducted the job interviews, you may gather additional information about the candidates that will be used to select the successful candidate. You must make sure that you do not discriminate against any of the candidates when using this information.

The additional information you may use to select the successful candidate can come from:

- referees
- medical tests
- psychological and aptitude tests
- criminal records checks.

Referees

It is best to seek information from referees after you have formed an opinion about the applicant from the interview. You should use referees to confirm what you already know

about the candidate and to enquire about his or her suitability for the job based on the selection criteria.

Apply the same principles you used when developing the position description and preparing the interview questions. In other words, do not ask questions of a personal nature that do not relate directly to the job requirements.

Medical tests

It may be necessary for candidates to undergo medical testing to assess potential health risks. These risks could be high for candidates with particular health problems given the nature of the job – for example, jobs involving heavy lifting for people with a spinal injury or disease.

It is against the law to refuse to employ a person based on information from a medical examination that discloses a health problem or disability if the information is not related to how adequately the person could perform the job.

If you require medical testing as part of the selection process, you should:

- inform those conducting the medical examinations about the precise nature of the job requirements
- not invade the candidate's privacy by enquiring into areas of the candidate's health that are not related to potential health risks associated with the job requirements
- ensure test results remain strictly confidential
- advise the candidate of the results.

Example of discriminatory medical testing

Lara applies for a position as an ambulance officer. She is denied the position because a pre-employment test indicates she has diabetes. The employer claims that Lara's medical condition puts her at risk of low blood sugar levels, which could cause a risk for patients and colleagues. However, Lara's condition could be easily managed by taking regular meal breaks. The risks associated with the condition are also so low that they do not pose a real risk to the safety or health of Lara or others. Lara could make a disability discrimination complaint.

Psychological and aptitude tests

Only use these kinds of tests if you reasonably require them to determine whether a person will be able to perform the specific requirements of the job. You should only use them to assess a candidate's suitability for a position based on the selection criteria. Do not use them to seek irrelevant information about a person's private life or personality. These tests should also be adjusted to accommodate the needs of people with disabilities or those from different cultural backgrounds.

Example of psychological testing that is not discriminatory

A person applying for a job as a police officer may be required to undertake a psychological assessment seeking information about personal characteristics such as self-control and ability to deal with confrontation. This kind of information is necessary to determine whether he or she can meet the genuine requirements of the job.

Criminal record checks

Discrimination on the basis of criminal record is not unlawful under federal law. However the Commission may investigate complaints of discrimination in employment on the basis of criminal record and, where appropriate, try to resolve them by conciliation. When a complaint cannot be resolved by conciliation, and the Commission finds that there has been discrimination, it may prepare a report for the federal Attorney-General which must be tabled in Parliament. Therefore employers should carefully consider when and how they use criminal record checks.

It is not discrimination under federal law to refuse a person a job if his or her criminal record means that he or she is unable to perform the *inherent requirements* of a particular job. However this must be determined on a case-by-case basis, according to the nature of the job and the nature of the criminal record. Employers in certain industries may also be legally obliged to refuse employment to people with certain types of criminal records.

For more information on criminal record, see *On the Record: Guidelines for the prevention of discrimination in employment on the basis of criminal record* at www.humanrights.gov.au/human_rights/criminalrecord/on_the_record/index.html. These guidelines provide practical solutions to the problems faced by employers in the area of discrimination on the basis of criminal record.

9. Offering the job

You have now reached the last step in the process – selecting your candidate and offering them the position.

To make sure your selection is fair and non-discriminatory, you should:

- focus on the selection criteria and how the candidates' skills and abilities match these
- check that your decision is not influenced by personal bias, myths or stereotypes
- use all information available, including the application, information gathered at the interview and reference checks, to make your final decision
- record your decisions and the reasons for them.

Employers and recruitment agents should give clear reasons to the unsuccessful candidates as to why they were not selected. Offer constructive feedback on how they fared against the selection criteria or their performance at the interview.

You can use the following checklist to help guide your decisions and to ensure you have considered your obligations under federal anti-discrimination laws.

Checklist: Preventing discrimination in recruitment

- plan your approach to ensure you comply with your obligations to prevent discrimination in recruitment processes
- educate others involved in the recruitment process about their obligations
- cast the net as widely as possible to attract a diverse pool of applicants
- be consistent and fair in the way you treat candidates
- accommodate people who require adjustments
- do not seek irrelevant personal information from applicants
- focus on the essential requirements of the job
- set aside personal bias, myths and stereotypes
- keep records of your decisions
- select the person best suited to the job.

Further information

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