

**EMPLOYMENT
NEW ZEALAND**

How to Hire

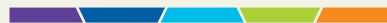
Guide for employers



**MINISTRY OF BUSINESS,
INNOVATION & EMPLOYMENT**
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New Zealand Government

EMPLOYMENT NEW ZEALAND



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Introduction

This guide provides information about how to hire employees. It doesn't cover other relationships, such as self-employed contractors. If you need more information about any matter, please check our website www.employment.govt.nz.

It is important to create a work place that supports good faith relationships from the start. Acting in good faith is very important during hiring. Job applicants and employers need to be open and honest with each other. This avoids later problems.

This guide focuses on employment relations, and the key issues in these other areas, it should help you avoid some common problems. If you don't follow this guide, it doesn't mean you are automatically in breach of the relevant legislation. However, you must follow legislation and government policy in areas such as: employment, immigration, health and safety, human rights, disclosure and privacy during hiring.

Information is sorted into three stages of the hiring process:

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

Throughout this guide, there are references to resources on our website.

1. Describing and advertising the job



- A. Planning the process
- B. Describing the job
- C. Developing a job description
- D. A full-time, part-time, permanent, casual or fixed-term employee?
- E. Hours of work
- F. Place of work
- G. Personal attributes
- H. Skills and qualifications
- I. Workplace character
- J. Attracting suitable job applicants

A. Planning for the process

Legislation will impact each stage of the hiring process:

- › attracting suitable applicants
- › interviewing
- › choosing the employee
- › making the offer
- › finalising the employment agreement
- › starting the relationship.

A mistake during your planning can be costly and damage the future employment relationship. You should plan to make sure:

- › you have a clear idea of all the costs of hiring someone
- › you have identified the requirements and skills needed for the job and clearly communicated these to all job applicants
- › the privacy and confidentiality of applicants is maintained
- › advertising, selection and hiring decisions are made fairly.
- › applicants have a clear understanding of the job and the process offers of employment and employment agreements are in writing
- › negotiation for an employment agreement is fair and complies with the Employment Relations Act 2000
- › there is an induction process giving the employee a fair chance of reaching the expected standard of performance.

B. Describing the job

At a minimum, the employee has to have a description of their work in their employment agreement.

You are more likely to find the best person if, you and the applicants have a clear idea of:

- › the job to be done
- › the hours and place of work
- › the knowledge, personal characteristics, skills, experience and qualifications expected
- › training and development to be provided.

Before you start the hiring process, you should think about any flexibility you have to meet the requirements of suitable employees who e.g., have a disability or care for children.

You can use hiring as an opportunity to look at the needs and structure of your business and make sure that it still fits your needs, now and for the future.

Ask yourself questions such as:

- › What made you create the position?
- › Is someone doing the job now? How would they describe their responsibilities? Do they have all the necessary skills for the job? What essential skills are missing?
- › Are the skills you need now, the same ones you need in the future?
- › What are the tasks that need to be done?
- › What are the main skills and attributes needed for those tasks?
- › Do tasks need specialist equipment or knowledge?
- › How will the person be supervised, and will they be supervising others?
- › Might you be adding anything extra in the future that should be explained?
- › Does the job have any legal requirements?
- › Will the person work alone or in a team?
- › What are your customers' expectations of your business and this position?

Thinking about these questions, and maybe talking to someone who understands your business can help to clarify your thoughts.

You could use your answers to these questions to draft a job description and work out the proposed hours and type of employment.

C. Writing a job description

A job description should:

- › identify your business and its focus
- › be written at a level suited to the position
- › identify core tasks and responsibilities
- › describe the reporting lines of the job e.g. who the person is responsible to and (if appropriate) who reports to them
- › describe any minimum legal or educational requirements
- › describe ideal personal skills, knowledge and attributes
- › include performance measures for the job.
- › Include any authority the position has (financial and people).



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

You should be clear on what you think is necessary, and what you think would be ideal as your legal requirements and ability to recruit may be affected by this.

Legal requirements:

In the employee's employment agreement you must state what you have agreed for hours of work. If you want to change this later, the employee will have to agree.

Most minimum conditions of employment are the same across all types of employment, although there are some things to consider:

- › There are additional requirements for fixed-term agreements. These can only be offered where there is a genuine reason for the fixed-term.
- › Casual employees are those that don't have any expectation of ongoing employment and some different rules may apply.
- › Special provisions for the payment of holiday pay apply for some fixed-term employees and for employees undertaking casual work.
- › There are also additional requirements if your employee is being employed on a trial or a probation period. Further information is available on page 18 .

E. Hours of work

Employees in different industries and types of work often have different hours of work.

Being flexible with your hours of work expectations, compared to industry standards may help you to recruit the most suitable employees. This can be the case when e.g. employees have to balance responsibilities, such as study or childcare against the needs of the job.

Before advertising and drafting an employment agreement, you need to know the hours the employee will work e.g.:

- › set hours daily or weekly at an hourly rate
- › on an annual salary reflecting an expectation of hours worked over the year, but not necessarily set daily hours
- › as required, with or without minimum hours of work
- › whether there will be an availability provision and what reasonable compensation will be paid
- › on a regular roster or cycle of hours
- › with a requirement for regular or occasional overtime, either as required by the employer or by agreement.

The hours of work may determine where you advertise the job. For example if work is for short or broken periods of time, local people are more likely to be interested.

F. Place of work

You must state the employee's place of work in their employment agreement.

When you advertise or offer the job, you should state whether job is one place, at a set number of sites, or always at different sites.

You should also consider whether the employee could do some or all of their duties at home or another location if they wanted to –providing flexibility for people can make it easier to get the best person.

G. Personal attributes

As well as defining the job, you should describe the specific personal characteristics that the job and your business need. Make sure that these are clear, easily understood, and not discriminatory.

You can cover areas such as:

- › the way you need people to relate to other employees and customers
- › the contacts or networks the employee may need to work with
- › language or cultural knowledge
- › fitness or physical requirements
- › skills and qualifications, such as: previous experience in a skilled area, literacy, computer skills, driver's licences, degrees.

As you work out the personal attributes needed, remember that these must reflect the genuine needs of your business. Setting requirements out of habit (e.g. you have always used a school leaver for this job, or the previous employee had this qualification so it is needed), may mean you don't get the best person for the job and may be discriminatory.

It is illegal to discriminate in employment on a number of grounds under the Human Rights Act 1993. For more information visit www.employment.govt.nz.

H. Skills, qualifications and training

You need to think about the qualifications the job needs and the training you could or will provide to the successful applicant.

Providing training is costly but it can be an investment for employers, to make sure employees can do the job and progress.

There is a very wide range of qualifications and on- and off-the-job training available. It can be difficult to compare overseas and New Zealand qualifications.

If you want to understand qualifications, or include an appropriate qualification in the position description, you can get help from:

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

If you will provide training towards a qualification, think about any entry or prior learning requirements for that training, and include that in the position description.

You should consider the level of literacy and numeracy required for the job, or for any training you will require the employee to do. Some employers give staff training in literacy.

When training is on the job, make sure requirements are realistic and that you have people with the time to deliver and attend the training.

Alternatively, investigate costs, availability and ability of employees for external training.

If you don't give an employee the necessary training, you will find it harder to take any action if they don't perform well.

I. Workplace culture

Every workplace has a culture or style. The real culture is not always the desired culture for you or a new employee.

You can use recruitment as an opportunity to think about your workplace culture and whether this is the right one for you. The job description should reflect the reality of your workplace. If there is a gap, you need to consider whether the job description or the culture should change.

Examples could be:

- › Do teams work together or does everyone just do what the supervisor tells them?
- › How formal and hierarchical is the workplace? Are you on a first name basis?
- › Are people encouraged to show initiative, or just work by the book?
- › Do you value diversity or expect people to follow the crowd?

You need to make sure your culture doesn't:

- › put off eligible workers
- › create an unsafe working environment
- › lead to discrimination/ harassment/ bullying.

J. Attracting suitable applicants

How you attract the best applicants depends on the job, your budget eg for advertising or recruitment agencies, and how much time you have.

Options include:

- › an existing employee, is there someone ready for a promotion or a new role? First advertise the role internally and find out
- › engaging a recruitment agency – this can be costly, but will reduce the amount of time you spend on the process. Agencies can help you clarify your needs, pay levels, experience needed and market availability
- › using Work and Income's service (free), matching qualified people to jobs
- › targeted advertising in industry journals, magazines and websites
- › contacting a relevant Industry Training Organisation (ITO)
- › developing a relationship with local education providers.eg providing work experience opportunities for students
- › developing relationships with local community groups
- › advertising in newspapers. They can advise on circulation numbers and reaching target audiences
- › advertising or searching online websites, industry websites and social media
- › contacting potential applicants directly, making sure you don't encourage an employee to break their legal obligations, e.g. notice period, restraint-of-trade.

If you are thinking of recruiting overseas, visit Immigration New Zealand for visa information www.immigration.govt.nz.

You are responsible for making sure advertisements don't mislead or discriminate.

You should also think about any extra procedures you must follow in hiring e.g., many public sector employers have to alert jobs to ensure that suitable and qualified applicants know about the job, and they have to hire the applicant best suited to the job.

Some private sector employers may have specific hiring processes in their collective or individual employment agreements, e.g. a preference for placing employees who they have recently made redundant. Another example is an agreement with staff that jobs will be advertised internally first.

2. Receiving applications through to interview

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- A. Application forms
 - B. Confidentiality of applications received
 - C. Letter on receipt
 - D. Setting times and places for the interview
 - E. Deciding what type of interview is best
 - F. Deciding the information you need
 - G. Understanding the information that the applicant may need
 - H. Assessment tasks
 - I. Contacting referees
 - J. Employment agreements
- A checklist about work entitlement is available at: www.immigration.govt.nz/visaview.

A. Application forms

You can ask people to fill out application forms at different times e.g.:

- › your job advertisement can ask applicants to use one, this is often provided with the job description.
- › you can send an application form to applicants that you have short-listed before you make the final selection of applicants to interview.
- › you can give out an application form when you arrange the interview or when people arrive for the interview.

The advantages of an application form are:

- › it provides you with information you need to help with your selection.
- › it provides an opportunity for the applicant to give their contact details.
- › it can include any required qualifications, such as tertiary institute grades or trade qualifications. You would usually ask for certified copies of these.
- › you can include other important questions in the application form, e.g. any relevant responsibilities in previous jobs.
- › it can be used to verify the applicants' residency status and work visas.
- › it can include a declaration that all information relevant to the job has been provided and nothing has been left out. You should discuss this with each applicant you interview, so that they understand the importance of the declaration. It may be used if there is a dispute about non-disclosure or misrepresentation.
- › it can have an authority for the applicant to sign so you can contact referees and do security, credit or criminal conviction checks, where these are a requirement of the job.
- › it can explain the hiring process e.g., that all the terms of any offer of employment are in the written job offer. This can avoid issues e.g. if someone says that you agreed to something during the hiring process, when you thought you said you'd look into it.

B. Confidentiality of applications

You need to make sure you protect the confidentiality and privacy of applicants. Disclosing an applicant's details without their consent, even by accident, will breach the Information Privacy Principles under the Privacy Act 1993 and may ruin your relationship with them. Don't leave messages with other people unless the applicant has agreed. Make sure you put confidential on the front of any written communications. Ask for preferred contact details on application forms.

You must also keep all material provided by unsuccessful applicants confidential. More detailed information about privacy is available on the Privacy Commissioner's website: www.privacy.org.nz.

C. Letter on receipt

It is good practice to contact all applicants to advise the next step in the process (e.g. short-listing those to be interviewed). Doing this in writing or email will limit misunderstandings.

D. Setting up interviews

Interviewing can be time consuming and costly. You should consider:

- › how many interviews you need to have
- › the best times for you and the applicant (e.g. if the job could be an after-school job, you should interview after school, and give applicants enough time to get there from school, or interview at the weekend)
- › how much time you need, to interview the applicants, and for breaks between interviews
- › privacy and confidentiality, e.g. schedule interviews so that applicants don't meet.
- › give enough notice so that applicants can take time off existing jobs or childcare
- › travel time, if you are recruiting from outside your local area
- › choosing a quiet place with no interruptions where 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.

Make clear to the applicant any information, proof of experience or preparatory work that will be required at the interview, e.g. a tradesperson's certification, designer's work portfolio.

E. Deciding what type of interview is best

You should apply consistent criteria for choosing who and how you interview.

Choose the interview method that best tests against the job requirements.

Approaches may include:

- › a one-on-one meeting, formal or informal
- › an interview panel
- › a written project or examination
- › a workshop environment
- › skills and/or attribute testing
- › a mix of the above.

You should use the same approach for all interviewees.



F. Deciding the information you need

To make sure you get the same information that you need from everyone, write down all your questions for each job in advance. Then you'll also be ready if someone just rings up looking for work.

Make sure you ask open ended questions, not just 'yes' or 'no' questions. That way you'll get more detailed information about the applicant.

G. Information applicants need

Your comments at the interview may be relied on later, so be clear and accurate.

Prepare answers on:

- › the process to be used after the interview
- › the likely employment terms.

so you don't make unintended commitments.

If an applicant raises special requirements e.g. car parking or flexible hours think carefully before answering. If you're not sure, you can look into it and let them know later. If you say no, you should say why, particularly if it could be seen as discriminatory.

If you agree and the applicant is successful, then you will need to put this 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 so you can assess whether they have the skills needed for a job e.g. where the applicant's previous work experience used different skills, or to help you to compare the skills of several applicants.

If you are using assessment tasks, they shouldn't take too long and should specifically assess ability to do job tasks. You should tell applicants in advance about the assessment they will be doing.

I. Employment agreements

Before you interview, work out whether the job is covered by a collective employment agreement so you know the options.

There are three possible scenarios:

1. There is a collective agreement in the workplace which covers the job, and the person is a member of that union.
2. There is a collective agreement in the workplace covering the job, and the person is not a member of that union.
3. There is no collective agreement in your workplace that covers the job.

In the first situation, the employee will be covered by the collective employment agreement. They can also have additional terms (that are not inconsistent) you negotiate with them e.g. specific school holiday arrangements, or agreed start or finishing times for special transport needs.

In the second and third situation, you will negotiate an individual employment agreement with the employee. You will need to consider all of the wages and conditions that you think are appropriate for the job.

There are minimum legal rights that apply, which no one can agree to reduce. Once you have met those requirements, what payment and other conditions you are willing to offer is likely to be driven by:

- › the profitability of your business
- › what other employers offer for similar jobs
- › what your other employees get, and your workplace policies and processes
- › any special circumstances in your region
- › the availability of the skills in the industry

Applicants might ask simple questions (e.g. pay) or more complex issues (provision of training leave).

Using our Employment Agreement Builder can help you think about, and develop a draft employment agreement before the interview. This can form the base for your employment offer to the successful applicant. Visit <https://eab.business.govt.nz>.

Your offer of employment must be made in good faith and you must:

- › give the employee an opportunity to get independent advice, and respond,
- › consider and reply to their response.

3. Selecting and appointing



- A. Making the selection decision
- B. When to make the decision
- C. Deciding to appoint
- D. References
- E. Making an offer
- F. Conditions in individual employment agreements
- G. Offers and employment agreements for part-time, casual and fixed-term employees
- H. Availability clause
- I. Offers including a trial or probation period
- J. Reaching agreement on an offer
- K. Avoiding a claim of unfair bargaining
- L. Dealing with unsuccessful applicants

A. Making the selection decision

Selecting the best applicant means comparing each applicant to the job requirements (including any personal attributes needed).

You can do this in two stages, ask yourself:

1. Which of the applicants could do the job?
2. Of these, which applicant is the closest match for the job requirements?

One method to use is to weight and rate each part of the job requirements and then rate the applicants against these.

If you don't have a job description, you can still list the most important skills and attributes for the job and rate the applicants against them to guide your thoughts.

Your ratings can also be used to identify issues to raise with referees. Test that the referee has a similar feeling for the applicant's strengths and weaknesses, and probe more deeply in areas where you are uncertain.

Be careful that any ranking system you use is fair. Avoid considerations that could be seen as unlawful discrimination under the Human Rights Act 1993. Visit the Human Rights Commission website: www.hrc.co.nz for more information.

B. When to make the decision

Don't make a snap decision and offer an applicant a job during the interview. Taking time to compare applicants and checking with referees will lead to better decisions.

When you are making a selection decision, remember that your process and supporting information may be examined if your decision is challenged e.g. by an unsuccessful candidate on the grounds of discrimination.

Public sector internal applicants may have a general right to challenge appointments.

C. Deciding to appoint

You don't have to make a job offer to anyone if the applicants aren't at the right standard, or if circumstances change during the process and you no longer need a new employee. You should advise all applicants of this.

D. References

You should always do at least one reference check before offering a person a job. These checks can be used to test your assessment of the person (especially if you have a particular concern) and can you can get valuable information about:

- › how to best manage the person,
- › what areas of development they have
- › how they will fit with your team.

Referees are usually contacted:

- › when the decision has come down to between 2 people
- › when a preferred applicant has been chosen but before any offer is made
- › rarely, when considering internal applicants, at the interview stage you might contact internal referees for internal references.

Reference checks should be done consistently. The following can help avoid common pitfalls:

- › You should specifically get the applicant's agreement, preferably in writing, to you contacting referees or other sources, and what you will use the information for. An easy way to do this is to include it in an application form that the applicants fill out and sign.
- › The Privacy Act 1993 means you must be reasonable when collecting information on the applicant's personal affairs.
- › You must take care with any pre-employment health screening eg you can't use this to discriminate against applicants with a disability, (where this is not a listed exception in the Human Rights Act 1993). For further example, seeking information not relevant to the proper and safe performance of a job.

When getting a reference, ask yourself what information is important and relevant. Prepare in advance and ask clear, open-ended questions that make the referee use judgement, rather than say 'yes' or 'no'.

If certification or registration is required for the position, consider the procedures and timescales of industry registration bodies. Also consider if this is a job where checking prior criminal convictions is appropriate.

For more information about privacy, visit: www.privacy.org.nz/information-for-employers/.

E. Making an offer

The next step is to formally offer the preferred applicant the position and an employment agreement.

This should be done in writing, but you can let the person know on the phone or email that you are likely to make the offer.

From the first contact, you are effectively starting 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, you could ask whether the person is a member of the relevant union at the interview. If you do, and then you don't appoint the person it may look like you have discriminated against them on the basis of union membership. To avoid this, don't ask the question until you are at the point of offering the person the job and make it clear that you want to know only so that you can make the appropriate employment agreement 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:

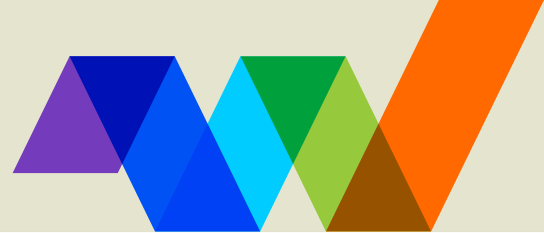
- › provide the job applicant with a written copy of the proposed agreement
- › advise them that they:
 - are entitled to seek independent advice about the agreement before responding
 - have a reasonable opportunity to get that advice. (What is reasonable will depend on the circumstances. You can agree with the employee in advance how long they think they will need so they can get advice).
 - can respond about the terms of the proposed agreement

You can use our sample letters of offer of employment as a guide. Download from our website at www.employment.govt.nz/starting-employment.

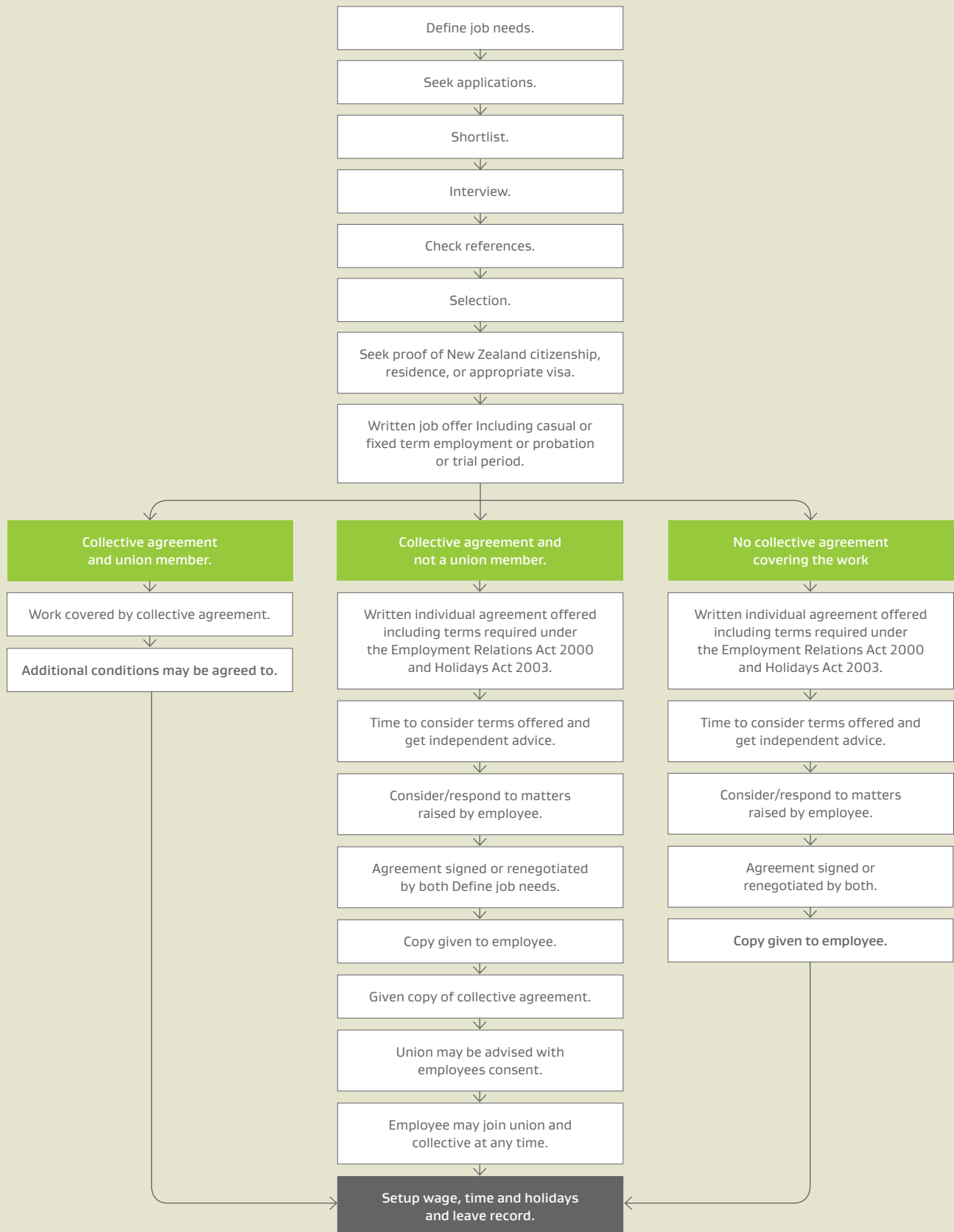
The person can respond to your offer and draft employment agreement by:

- › rejecting your offer
- › accepting your offer and individual employment agreement
- › indicating they want to accept the offer but want to discuss changes to the proposed individual agreement.

You must consider any changes they want to negotiate, and respond to their suggestions. You don't have to agree to any or all of their proposals.



How to Hire Flow Chart



F. Conditions in individual employment agreements

An individual employment agreement must be offered in writing. This is the law and helps the employer and employee have the same understanding of the terms and conditions.

You can use the Employment Agreement Builder to develop employment agreements <https://eab.business.govt.nz>

Individual employment agreements must have the following:

- › the employer and employee names
- › a description of the work to be performed
- › an indication of the work hours and place
- › the wages or salary to be paid
- › the employee's right to be paid at least time-and-a-half for working on public holidays
- › how to resolve employment relationship problems (in plain-language).

Most employees must have a clause covering their rights on the sale or transfer of the business, or if work is contracted out.

Some employees doing work such as cleaning and food catering have special rights in this area. Information about those employees and their rights is available on our website at www.employment.govt.nz.

Employment agreements can't have unlawful terms e.g.:

- › wages less than the relevant minimum wage
- › annual holiday, public holiday, sick or bereavement leave entitlements less than an employee's rights under legislation
- › anything less than entitlements under the Employment Relations Act 2000.

You must inform the employee about their rights under the Holidays Act 2003. You can do this by putting them in the employment agreement. It is important that these rights are clearly understood by the employee. You will also need to inform employees about policies for part or all of your business such as "cashing up annual leave" or "transferring public holidays to another day".

The Employment Agreement Builder has common terms of employment, such as:

- › leave entitlements
- › meal and rest break entitlements
- › how the employee's salary or wage rate will be paid (e.g. by cheque or direct credit) and when (such as in arrears or in advance)
- › benefits the employee is entitled to, e.g. tool or clothing allowance, medical insurance or superannuation
- › training to be provided
- › health and safety obligations
- › notice periods
- › trial or probation periods
- › making changes to terms and conditions clause
- › confidential information and restraints applying after employment ends.

It is important to ensure that the employment agreement has all the things that you and the employee agreed, e.g. including anything you agreed during interviews.

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

The process, rights and responsibilities for the offer and consideration of employment agreements for part-time, casual and fixed term employment is the same as permanent, full-time employment.

i. Casual employment

Casual employees have no expectation of ongoing employment. Other than this, they generally have similar minimum employment rights as other employees. However, casual employees can be offered annual holiday pay on a 'paid as you earn' basis. This must be agreed and stated 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 our website at www.employment.govt.nz.

ii. Fixed-term employees

Fixed-term employees are only employed for a set period. Other than this, they generally have similar minimum employment rights as other employees. To offer fixed term employment you must have genuine operational reasons based on reasonable grounds. Reasons could include:

- › you need a replacement for an employee who is absent on parental leave
- › the work relates to a one-off project
- › the work is seasonal.

You must include the reason and the period of the fixed term in the employment agreement.

If a fixed-term agreement is for less than 12 months, the employment agreement can provide for annual holiday pay to be made on a 'paid as you earn' basis if the employee agrees. This needs to be clearly stated in the employment agreement, it can't be less than 8% of the hourly rate, and it must be shown as a separate item in the employee's pay slip and in wage and time records. You can visit our website for more information at: www.employment.govt.nz.

If you don't follow the rules relating to fixed-term agreements, this could mean that you can't end the employment when the fixed term ends.

H. Availability Clauses

You can't have a zero hours contract. This means that you can't force an employee to be available for and accept any work offered unless:

- › their employment agreement contains agreed hours of work and includes some guaranteed hours of work
- › the availability clause only relates to extra hours
- › the employer has to have good reasons based on reasonable grounds for having the availability clause and also for the number of hours of work stated
- › the availability clause has to give the employee reasonable compensation for making themselves available.



I Trial or probation periods

Trial periods and probation periods can be used by employers and employees to assess and make sure that the employee can do the job. These options shouldn't be used instead of a proper recruitment process

Trial periods

Employers can employ employees they haven't employed before, on a trial period of up to 90 calendar days.

Any trial period must be agreed in good faith before the employee starts work including considering and responding to any issues raised by the new employee. It must be written in the employment agreement stating:

- › the employee will be on a trial for the defined period, and
- › during the trial, the employer can dismiss the employee, and
- › the employee can't bring a personal grievance or other legal proceedings about their dismissal.

You must follow a fair process throughout the trial period. This includes:

- › telling the employee if there are any issues with their work (and if there is a chance that their employment might not be continued after the probation period ends)
- › telling them what these issues are, and what good performance in this area looks like
- › giving the employee support, and ongoing and appropriate training and the opportunity to improve.

The employee and the employer can access Employment Mediation Services at any time.

An employee who is given notice of dismissal before the end of a trial period can't raise a personal grievance on the grounds of unjustified dismissal (but can still raise a personal grievance on other grounds, such as discrimination or harassment or an unjustified action by the employer that disadvantaged the employee).

At the end of the trial period, if the employee hasn't resigned or received notice of dismissal, their employment automatically continues.

Trial periods don't affect any other employment rights e.g. annual holidays.

Probation periods

Employers can agree to a probation period with new or existing employees.

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

The process to offer an employment agreement with a probation period is the same as for other employment agreements.

Any probation period must be agreed in good faith before the employee starts work including considering and responding to any issues raised by the new employee. It must be written in the employment agreement that the employee will be on probation for the defined period. The period can be for any reasonable amount of time taking into account all of the relevant circumstances or the employer, the employee and the job.

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.

During the probation period the employer must follow a fair process. This includes:

- › telling the employee if there are any issues with their work (and if there is a chance that their employment might not be continued after the probation period ends)
- › telling them what these issues are, and what good performance in this area looks like
- › giving the employee support, and ongoing and appropriate training and the opportunity to improve.

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 followed closely.

At the end of a probation period, the employer must assess the employee fairly and if their work wasn't good enough tell them why and let them respond. If the employer then decides to dismiss the employee, they need to give them the notice in their employment agreement.

J. 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.

Sample of an Employee Acknowledgment

The Employee acknowledges that:

- I. they have been advised of their right to take independent advice on the terms of this agreement
- II. that they have had a reasonable opportunity to take that advice
- III. that they have read these terms of employment and understand these terms and their implications, and
- IV. that they agree to be bound by these terms of employment and the employer's policies and procedures.

K. Avoiding a claim of unfair bargaining

Employees must 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 for their individual employment agreement was unfair. This might be because an employee:

- › can't understand what the agreement means because of age, sickness, mental, or educational disability, a language barrier, or emotional distress, and didn't receive good independent advice.
- › reasonably relied on your advice. However if the employee is experienced and had an opportunity to access legal advice, the bargaining is unlikely to be unfair.
- › agreed after unfair means, e.g. threat or extreme pressure
- › didn't know about or have the opportunity to get independent advice and you knew or should have known about it

Keeping records of the offer and agreement process will help you respond to claims.

If there is a concern about unfair bargaining, you or the employee can get help from Employment Mediation Services or private mediator. If it is unresolved, the employee can go to the Employment Relations Authority who could award compensation, and in some cases it may cancel or vary the agreement.

L. Unsuccessful applicants

You need to deal with unsuccessful applicants' information confidentially. This includes:

- › application letters and forms
- › curriculum vitae/ resume
- › interview notes and assessments.

You can:

- › keep the information in a secure place (if the applicant wants you to keep it for future vacancies), or
- › return any documents provided by the applicant and retain the rest securely, 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, you should inform unsuccessful applicants.

4. Getting new employees started



- A. Mandatory Requirements
- B. Good practice
- C. Record keeping
- D. The first-time employer
- E. Induction

A. Mandatory Requirements

By the time your new employee is ready to start work, you must:

- › know the person is allowed to do the job in New Zealand
- › have an employment agreement with the employee.

B. Record keeping

You must:

- › get the employee's (IR330) tax declaration
- › set up a wage and time, leave and holidays record)
- › have details of New Zealand citizenship, residence, or work visa
- › dates when the employee becomes entitled to conditions under either minimum legal entitlements or additional provisions in their employment agreement

You should have:

- › emergency contact details
- › bank account number for wages (if this is your agreed method of payment).

C. The first-time employer

If this is your first employee, you must register as an employer with Inland Revenue, (who will advise ACC). They can give you advice and guides for first-time employers – see: www.ird.govt.nz and www.acc.co.nz.

D. 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 risks and hazards within the workplace and how to report/isolate/ minimised or eliminate these.
- › provide the workplace evacuation plan
- › provide safety or other equipment needed for the job before the employee starts work
- › show the employee where the toilets and other facilities are
- › tell the employee who to contact in an emergency, or absence
- › clarify hours of work and break times
- › discuss probation or trial periods if relevant and the support and guidance that the employee will receive
- › introduce the employee to supervisors, co-workers, and union delegate if a member

Touch base at the end of the day to see if the employee has any questions after day one.

For further information on induction of new employees visit www.employment.govt.nz.

