

## RECRUITMENT LEGISLATION FRAMEWORK

The primary impact of legislation relevant to recruitment and employment practices is to avoid bias or discrimination and thus ensure equal employment opportunities and appointments based on merit.

The key points of the Acts that most closely affect the University's recruitment policies and practices are outlined below.

### The Human Rights Act 1993

The Human Rights Act 1993 protects people in New Zealand from discrimination in a number of areas of life. Discrimination occurs when a person is treated unfairly or less favourably than another person in the same or similar circumstances.

As an employer, the University is liable under the Human Rights Act to account for its actions. Our employment practices have been developed to ensure compliance with the requirements of the Act, and University employees need to be familiar with the principles of the Act.

There is a particular requirement to take care in the writing of advertisements relating to vacancies. It is unlawful to advertise any position in a manner which indicates discrimination, or the intention to discriminate, on any of the 13 specific grounds listed in section 67 of the Act:

- ✘ Sex, which includes pregnancy and childbirth
- ✘ Marital status
- ✘ Religious belief
- ✘ Ethical belief
- ✘ Colour
- ✘ Race
- ✘ Ethnic or national origins
- ✘ Disability
- ✘ Age
- ✘ Political opinion
- ✘ Employment status
- ✘ Family status, including responsibility for care of dependants
- ✘ Sexual orientation

Any selection decisions should be fair and lawful under the Human Rights Act. It is unlawful to select for appointment, or to offer less favourable terms of employment to any particular applicant, on any of these grounds.

Further information about the Act is available on the Human Rights Commission website: [www.hrc.co.nz](http://www.hrc.co.nz)

## The Privacy Act 1993

This Act promotes and protects individual privacy. As its concern is primarily with the privacy of information about people, there are some key principles of this Act which impact strongly on the area of recruitment and appointment.

Under the Act, the employer's ability to seek information about applicants without their approval is very limited. It is advisable to specifically obtain the candidate's consent, preferably in writing, to your obtaining information from referees or other sources.

Personal information should not be held longer than necessary and should not be disclosed to people in the University other than those involved in the appointment, except with the consent of the applicant. Disclosing details of an application without consent, even by accident, is likely to breach the Privacy Act and could negatively impact the relationship with a potential employee.

Any information and records of recruitment decisions, including shortlisting and interview notes, should be stored securely for 12 months then confidentially destroyed.

Further information on the Privacy Act is available on the Privacy Commissioner's website: [www.privacy.org.nz](http://www.privacy.org.nz) or [www.privacy.org.nz/information-for-employers](http://www.privacy.org.nz/information-for-employers)

## The State Sector Act 1998

This legislation requires the University to act as a good employer, which means having in place policies and procedures that promote equal employment opportunities (EEO) and the principle of merit in employment.

The University is required to advertise a vacancy in a way that ensures an appropriate pool of suitably qualified candidates are aware of the vacancy and to appoint the applicant best suited to the position.

## The Employment Relations Act 2000

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.

A significant provision of the Act in the context of recruitment and appointment is that it defines employees as including those who have accepted an offer of employment but have not yet commenced work. These people have the same rights to personal grievances as employees who are actually working.

For this reason, and also because the Act lays down statutory minimum information which

## The Health and Safety in Employment Act 1992 and Amendment 2002

The principal objective of the Act is to prevent harm and exposure to hazards to employees while at work. Harm is defined as either physical or mental, and includes

actual or potential cause of harm, as well as exposure to physical hazards that may cause harm.

This is relevant to the recruitment process in that a key way to comply with the directive of the Act – to ensure the safety of employees – is to ensure an accurate person-job fit and an accurate job description/information statement. Information provided should include the content, scope, reporting lines, skill set of the position and discussing any significant hazards that may be associated with the job. For some positions, there will be health requirements for the candidate and these needs to be conveyed during the process.

## The Immigration Act 2009

An employer must not employ a foreign national who is not entitled to work in New Zealand or not entitled to work for that employer.

Information about employer obligations is available on the [Immigration New Zealand Employer Hub](#). The site also has information about finding, settling and retaining staff from overseas.

## Immigration Advisers Licensing Act

The purpose of this Act is to promote and protect the interests of consumers receiving immigration advice and to enhance the reputation of New Zealand as a migration destination, by providing for the regulation of persons who give immigration advice. This Act requires anyone providing immigration advice about New Zealand to be licensed. Anyone that provides immigration advice, who is not licensed, can face penalties (prison and/or fines). The University of Otago is not licensed to provide advice.