



Equal opportunity in practice

> Employer's checklist: Equal opportunity recruitment

Under Victorian and federal anti-discrimination laws, employers must not discriminate in their recruitment processes – whatever the size of their business.

Each step of the recruitment process should be non-discriminatory, including:

- advertising the position
- working with recruitment agencies
- the application process
- conducting interviews
- selecting the right candidate
- pre-employment medical tests
- pre-employment aptitude tests

Advertising the position

It is against the law to publish or display an advertisement that indicates, or could reasonably be understood to indicate, an intention to discriminate because of personal characteristics protected by the law. For example, by specifying the preferred race, age or gender of applicants. (For a full list of protected personal characteristics see *Equal Opportunity Act 2010: Key terms*.)

An advertisement includes a notice, sign, billboard, label, circular, display and classified advertisement, and online advertisement. It can be handwritten, printed, screened or broadcast.

Tips for employers

- Make sure the advertisement focuses on the essential skills and abilities to do the job.
- Write in clear, plain English.
- Avoid any reference to age, sex, race, religion, parental status or any other personal characteristic protected by law, unless it is part of the genuine requirements of the job or the organisation has a specific exemption or exception – for example, people who serve alcohol must be over 18.
- Make sure the advertisement is written in a way that does not discourage some people from applying or imply that only certain applicants will be considered, such as using phrases like 'join a dynamic young team' or 'seeking mature, experienced professional'.

- Encourage as many suitable candidates as possible to apply. If you have the resources, consider advertising the position internally and externally, as well as using mainstream and community media outlets, local newspapers, specialist journals, informal networks, industry groups and other forums.

Suggestions for avoiding discriminatory language in advertisements

| Instead of | Use |
|-------------------------|--|
| Junior | Seeking experience |
| Senior or mature person | Responsible, able to work unsupervised |
| Office junior | Office assistant |
| Five years' experience | Demonstrated ability |
| Sales girl | Sales assistant |
| Foreman | Supervisor |

Working with recruitment agencies

It is against the law for an employer to provide a discriminatory brief to a recruitment agency. It is also against the law for the recruitment agency to promote a discriminatory selection process. Consequently, both an employer and a recruitment agency, depending on the circumstances, can be found to have authorised and assisted discrimination.

Employers should:

- provide a clear brief to the agency on the requirements of the role, focusing on the essential skills and abilities needed to do the job
- make it clear to the agency that you don't want them to discriminate unlawfully
- make sure the agency has a clear understanding of equal employment principles and anti-discrimination laws.

Application process

The application process should be open and accessible, and not present barriers that could discourage people from applying. For example, only providing an online application process may disadvantage people unable to access the internet.

Employers should also minimise physical barriers that may prevent people from attending interviews, such as locations inaccessible by wheelchair.

Conducting interviews

As an employer, it is important that you get the best person for the job.

It is against the law to request information about someone's personal background or characteristics – such as their age, marital status or parental status – and then refuse them a job based on this information.

People are not obliged to disclose information about disability or illness unless it is relevant to the job. Employers should only ask about whether candidates have ever made a workers' compensation claim, how many days sick leave they took in the previous year or other questions about health conditions if they relate to the candidate's ability to meet the requirements of the job. This information should not be used to discriminate against candidates.

Tips for employers when conducting interviews

- Focus solely on matching the skills and experience of the candidates against the requirements of the job. Prepare a list of questions that relate directly to the job requirements. All candidates should be asked the same set of questions.
- Ensure people conducting the interview have a good understanding of the job requirements and are aware of the importance of only asking questions that relate to the role, and of following equal opportunity principles.
- Ask if candidates have any special requirements in order to attend the interview.
- If possible, consider diversity on the selection panel, including both men and women, and people from different cultural backgrounds and age groups.

- Allow candidates time to make their point and, if necessary, ask follow-up questions so they can elaborate on their initial answers. Make a record of the answers provided by each candidate and ensure they are kept confidential.
- If you listed key selection criteria in your advertisement, develop a scoring system to rank each candidate's ability to meet the 'essential' and the 'desirable' selection criteria.
- Avoid asking questions that are presumed to be relevant only to certain applicants, for example, to women, older workers or parents. Instead, applicants should be asked whether they can fulfil the key requirements of the job, such as travel, overtime or performing any necessary physical activities.
- Ensure any skills tests are relevant to the job, non-discriminatory and that any specific needs of candidates with a disability are taken into account.

Suggestions for questions that focus on the requirements of the job

| Instead of asking | Consider asking |
|--|--|
| Have you made a workers' compensation claim in the past? | This job requires heavy lifting/sitting at a computer terminal. Are you able to do that without compromising the health and safety of yourself and others? |
| What are your childcare arrangements? | This job requires travel interstate. Are you able to spend time away from home? |
| Are you planning to retire soon? | Where do you see yourself in five years time? |
| Do you intend to have a family? | Can you commit to the organisation for two years? |

Remember, it is against the law to request information about someone's personal background or characteristics and then refuse them a job based on this information.

Selecting the right candidate

After the interview process, employers or the selection panel need to review the information they have collected to determine the best person for the job. In coming to a decision it is important to set aside assumptions and stereotypes. The focus must be on choosing the right person for the job, based on the demonstrated skills and abilities of the candidates.

Tips for employers in choosing the right candidate

- Assess all information that has been collected or provided, including the application form, resume, interview results and referee reports.
- Rank candidates according to their ability to meet the 'essential' and the 'desirable' requirements of the job.
- Record the decision and the reasoning behind it, as it allows an employer to provide specific and constructive feedback to unsuccessful candidates, if requested. Sometimes unsuccessful candidates can assume that they have been discriminated against if they do not receive a satisfactory reason for missing out on the job.
- Ensure the process is confidential and securely dispose of material from unsuccessful candidates when the recruitment process is complete.

Pre-employment medical tests

Many organisations no longer carry out pre-employment medical tests, but for some jobs it will be appropriate, for example, if the role involves heavy lifting or long periods of sitting. Pre-employment medical tests must relate directly to the requirements of the job. They must only collect relevant information on the candidate's ability to perform the requirements of the job, not their general state of health.

An employer cannot refuse to employ a person on the basis of a medical test that discloses a disability or impairment that is unrelated to adequate performance of the job.

Employers should:

- provide the person conducting the tests with specific information about the type of activities the person would be required to undertake in the role. Make sure they have a copy of the position description
- allow people who use hearing aids, glasses or other equipment to use it during the test
- advise the candidate of the outcome of the test and ensure that the information is treated with strict confidentiality, as privacy laws may apply
- depending on the results of the test, consider making reasonable adjustments to the workplace to support the person to do the job (for more information about reasonable adjustments see *Equal Opportunity Act 2010: Key terms*).

Bill applied for a job with a bus company. He is the best candidate for the job but a pre-employment medical test found that he had a back injury and driving for long periods may make his injury worse. The employer requested further specific medical tests. The medical report stated that Bill could perform the genuine requirements of the job without risk to his back if some adjustments were made to the seat. Bill was then offered the job.

Pre-employment aptitude tests

Aptitude tests – also known as psychological tests or psychometric tests – must be designed so they relate directly to the genuine requirements of the job.

They should only be used to assess an applicant's suitability for the position, based on the selection criteria. Other information obtained from the tests – for instance, about a person's private life or personality – should not be used when making a decision about an applicant's suitability.

Employers should:

- discuss the requirements of the position with the person designing or delivering the aptitude test
- discuss the need to ensure the test does not indirectly discriminate against people with a disability or people from different cultural backgrounds
- make sure that the test is developed, delivered and the results interpreted by someone with appropriate expertise and experience. An employer can be legally liable for the discriminatory actions of an external consultant conducting aptitude tests on behalf of the organisation
- consider the results of the test in conjunction with other information collected through the recruitment process, such as the interview and referee checks, to determine the best person for the job. The test results should be treated with strict confidentiality.

Need more information?

Take a look at our training and consultancy services

Online humanrightscommission.vic.gov.au/education

Talk to someone at the Commission

Enquiry Line 1300 292 153
TTY 1300 289 621
Interpreters 1300 152 494
Email employers@veohrc.vic.gov.au



**Victorian Equal Opportunity
& Human Rights Commission**

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Disclaimer: This information is provided as a guide only. It is not a substitute for legal advice. This information has been prepared to support employers to meet their obligations under the *Equal Opportunity Act 2010*. There may be other laws that also apply to your workplace. We recommend that you seek further advice.