

Can a hiring manager really ask that?

There are things that employers can ask you in a job interview, and there are those they can't. Surprisingly, those questions aren't always what you'd expect.

The [New Zealand Human Rights Act](#) stops employers asking you discriminatory questions. There are [circumstances](#), however, when you can be asked if you're Māori or Pasifika, for example, if you have criminal convictions, or if you have disabilities that might prevent you from doing the job.

Employment lawyers Jennifer Mills and Rachael Judge of law firm Anthony Harper say some of those exceptions include:

- **If you are a union member.** Employers are allowed to ask you if you're a union member under the Act. "However, this is not advisable as political opinion is a prohibited ground of discrimination and there is case law in New Zealand which suggests that if there is a clear connection between the government and its policies and the activity being undertaken by the union or its members, that amounts to expression of a political opinion," say Mills and Judge.
- **If you have any medical problems.** Discrimination on the basis of mental or physical disability is prohibited under the Human Rights Act. But this does not stop an employer from inquiring as to whether the applicant has the key abilities required to perform the role. "For example, an employer would not wish to hire someone with severe visual impairment to fly an airplane," say Mills and Judge.
- **If you're Māori or Pasifika.** Discrimination on the base of race or ethnicity is a no-no. However, employment forms in New Zealand often include tick boxes for a candidate's ethnic group, the lawyers point out. "This is permitted so long as the information is being collected for anonymous statistical data for equal opportunities reporting, or for profiling who respond to their job applications." In addition, the Act specifically allows for positive discrimination in some circumstances, and some places may be reserved for people of Māori or Pacific Island descent.
- **If you have a criminal record.** "Generally, employers are able to ask a prospective employee to disclose any criminal convictions or pending criminal charges, because the information relates to their suitability to the position," Mills and Judge say. But the employer must receive written authorisation from the employee for a criminal records check to be carried out. Thanks to the [clean slate law](#), candidates can often withhold information about minor convictions more than seven years old.

- **If you smoke cannabis or use other (illegal) drugs.** The Human Rights Act says nothing about drug use or history. “However, in the spirit of the legislation, these lines of inquiry are again only legitimate if they concern an applicant's suitability and further ability to fulfil a role.” There are certain occupations, such as bus driver, where being drug free is a legitimate occupational requirement due to public safety.
- **Running a credit check on you.** “An employer is entitled to run a credit check on a prospective employee if there is a legitimate reason for doing so, for example, the job involves dealing with things such as money, accounts, or financial administration.” However, the job applicant does need to provide their consent before a credit check is undertaken.

Finally, the Ministry of Business, Innovation & Employment, says people who feel they have been discriminated against on grounds such as age, race, sex, sexual orientation, disability, religious belief, marital status, or political opinion can complain to the [Human Rights Commission](#). The Commission provides a free confidential service that works to resolve the issue informally. If a matter isn't resolved through this process, a complaint can then be taken to the [Human Rights Review Tribunal](#).

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