

# EMPLOYMENT

## Law guide - Hiring staff

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## Employing staff

Today's equality and anti-discrimination legislation creates a myriad of problems for employers who are seeking the best candidate for a job. There are also new criminal offences arising from immigration issues.

Over the associated pages we set out a number of ways in which an employer can protect itself from problems arising when recruiting staff.

### **Recruitment**

This chapter considers how to recruit the right staff whilst treating all candidates fairly and avoiding discrimination.

### **Job descriptions**

This chapter outlines the manner in which an employer should write a good job description.

### **Application Forms**

This chapter describes how application forms can be used to discover an applicant's skills and competencies. It also highlights the importance of complying with the Data Protection Acts.

### **The interview**

This chapter takes us through how the interview process works and how individuals conducting the process have developed appropriate interview techniques. It also highlights the importance of conducting an interview in a non-discriminatory way.

### **Unusual employees**

This chapter covers employing people with criminal convictions and also discusses how the Garda Vetting procedure works.

## Recruitment

### **Discrimination**

In advertisements for new staff and during interviews, you must not say anything that could be seen as discrimination against any prospective employee on grounds of sex, gender reassignment, race, colour, ethnic background, marital, civil or family status, disability, trade union membership and/or activity, age, religion/belief, political opinion, sexual orientation or membership of the traveller community.

You should record your reasons for not offering a job to any unsuccessful applicant, ensure that this information is retained and that it cannot be interpreted as showing an intention to discriminate.

To avoid a potential claim of discrimination, the employer should treat every applicant in the same way.

Sometimes a job will require an applicant of a particular sex, race, age, religion/belief or sexual orientation. So long as this is a genuine requirement or qualification for the job then it will not be unlawful to discriminate against certain sectors of society.

If you feel that this may apply to you then we advise that you seek legal advice - check this website to see what might be available with this service.

### **Application form**

Each candidate should be asked to complete a job application form. Completed application forms are useful in compiling personnel records, assisting the objective selection of suitable candidates and providing a framework for interviews. However, the information collected is subject to the Data Protection Acts.

### **Entitlement to work in the Republic of Ireland**

You should ask all candidates to bring with them to the interview documentary evidence that they are entitled to work in Ireland.

It is a criminal offence for an employer to knowingly employ a person aged 16 or over who does not have permission to live and work in Ireland and a court can impose fines and/or terms of imprisonment for each illegally employed individual.

In addition, an employer may be liable to a civil penalty for unlawfully employing a worker who does not have a right to work in the Republic of Ireland.

### **Appropriate documents**

All candidates offered employment should be required to produce an appropriate document before they start work. To avoid any potential liability, it is good practice to ensure that the

prospective employee produces one or more of the documents set out below prior to commencing their employment:

- a passport showing that the holder, or a person named in the passport as the child of the holder, is an Irish citizen
- a passport or national identity card showing that the holder, or a person named in the passport as the child of the holder, is a national of the European Economic Area or Switzerland
- a residence permit, registration certificate or document certifying or indicating permanent residence issued by the Irish Emigration Office
- a passport or other travel document endorsed to show that the holder is exempt from immigration control, is allowed to stay indefinitely in Ireland, has the right of abode in Ireland, or has no time limit on their stay in the Republic of Ireland
- an Immigration Status Document issued by the Irish Emigration Officer indicating that the person named in it is allowed to stay indefinitely in Ireland or has no time limit on their stay in Ireland, when produced in combination with an official document giving the person's Personal Public Service number and their name issued by a Government agency or a previous employer
- a full birth certificate issued in the Republic of Ireland which includes the name(s) of at least one of the holder's parents, when produced in combination with an official document giving the person's Personal Public Service number and their name issued by a Government agency or a previous employer
- a full adoption certificate issued in the Republic of Ireland which includes the name(s) of at least one of the holder's adoptive parents when produced in combination with an official document giving the person's Personal Public Service number and their name issued by a Government agency or a previous employer
- a certificate of registration or naturalisation as an Irish citizen, when produced in combination with an official document giving the person's Personal Public Service number and their name issued by a Government agency or a previous employer
- a letter issued by the Irish Emigration Office to the holder which indicates that the person named in it is allowed to stay indefinitely in Ireland when produced in combination with an official document giving the person's Personal Public Service number and their name issued by a Government agency or a previous employer

Note: A Personal Public Service number on its own is not enough to satisfy this legal requirement and should only be used in combination with another document from this list.

## Job descriptions

### Job descriptions

When employing staff, an employer should write a job description. Job descriptions should detail the purpose, tasks, skills, qualifications, experience and responsibilities required for the job. A good job description should:

- describe the main purpose of the job in one sentence
- detail the main tasks and duties of the job using active verbs, like 'writing', 'repairing', 'machining', 'calculating', instead of vaguer terms like 'dealing with', 'in charge of'
- expand on the main tasks and the importance of the job
- include information such as the number of people to be supervised, the degree of precision required and the value of any materials and equipment used
- contain a profile of the skills, experience, qualifications or aptitudes considered essential and desirable in the jobholder (a person specification)

A good job description can help with recruitment, induction and training. It enables prospective applicants to assess themselves for the job, and can be used as guidance for judging achievements. Consequently the job description should be included in the covering letter sent to each applicant with the job application form.

### Person specification

Drawing up the person specification allows the organisation to profile the ideal person to fill the job. It is very important that all the skills, experience, qualifications or aptitudes included in the specification are related precisely to the needs of the job. If not, there is a greater chance that someone will be employed who is not suited for the role.

The person specification should not state any unnecessary requirements for the job to avoid the possibility of discrimination against particular groups of potential applicants. Writing a job and person specification should help an employer to develop and implement a policy of equal opportunity in the recruitment and selection of employees.

### Factors to consider

Factors to consider when drawing up the specification include:

- the length and type of experience necessary, being careful not to overstate the requirements (For example, do not ask for 'excellent knowledge of English' when 'good understanding' is more appropriate.)
- the competencies necessary, making it clear what importance is placed on each criterion, and whether it is necessary or desirable

- education and training, but only so far as is necessary for satisfactory job performance, unless the person is being recruited on the basis of future potential (e.g. graduate trainees), when a higher level of education may be specified. It should also be made clear that degrees or diplomas attained abroad are acceptable, so long as they are of an equivalent standard to Irish qualifications.
- any criteria relating to personal qualities or circumstances which are essential and directly related to the job. These must be applied equally to all groups irrespective of age, sex, race, nationality, religion or belief, creed, disability, sexual orientation and membership or non-membership of a trade union. To do otherwise is potentially discriminatory.

The person specification assists with the selection of candidates and the subsequent interview.

## Application forms

### Staff application forms

Even the smallest business should today use a job application form when it wishes to recruit staff. Job application forms allow an employer to frame questions to discover applicants' skills and competencies in a consistent format, which is essential in defending any cases where the employer is accused of discrimination or unfair treatment. It also allows the employer to ensure that any personal questions asked are compliant with the requirements of the Data Protection Acts. You should ensure that you comply with your responsibilities under the Data Protection Acts. For more information on your obligations with respect to the Data Protection Acts, see the Data Protection Commissioners website [www.dataprotection.ie](http://www.dataprotection.ie).

### Acceptable questions

In the personal section of a job application form all the information sought should be uniform and relevant. It is accepted practice to require all applicants to supply:

- title
- surname
- forenames
- home address
- home telephone number
- mobile number
- whether or not they require a work permit

It is also acceptable to ask what reasonable adjustments are required for the candidate if they suffer from a disability or medical condition so that appropriate steps can be taken to assist the candidate at an interview.

Provided such questions are asked of both men and women, and the standards set in assessing replies are related to job requirements and not to assumptions about sex differences, they will do no harm and are a legitimate part of the selection process.

Due to age discrimination legislation, an employer is now not recommended to ask a candidate any questions relating to their age such as their date of birth or details of when they obtained any qualifications.

### Unacceptable questions

It is not acceptable to ask a question which could be directly or indirectly discriminatory. This includes questions such as 'Are you heterosexual?' or 'Are you a Muslim?' Sometimes a job will require an applicant of a particular sex, race, age, religion/belief or sexual



orientation. So long as this is a genuine requirement or qualification for the job then it will not be unlawful to discriminate against certain sectors of society.

Please note that if you are considering employing new staff which would result in discriminating against certain sectors of society based on a genuine requirement or qualification for the job then you should take great care.

The Employment Equality Acts 1998 - 2008 outlaw asking questions relating to health or disability and the use of health questionnaires before a job offer is made, unless it is being used in order to:

- determine whether any reasonable adjustments need to be made for an applicant during a recruitment process
- determine whether an applicant can undertake a function that is vital ('intrinsic') to the job, such as enquiring about any mobility issues where the job entails handling heavy goods
- monitor diversity amongst the applicants, such as enquiring whether an applicant is disabled in order to establish whether advertisements are reaching disabled people
- take positive action to assist disabled people
- establish that the applicant has a disability where having a disability is an occupational requirement of the job

The Equality Act permit employers to make any offer of employment conditional upon receiving a satisfactory medical report/health questionnaire. Questions asking the applicant to disclose details of past health may not be acceptable under the Employment Equality Acts 1998 - 2008.

## The interview

### Things to consider prior to interview

It is important for even the smallest business to address the process of interviewing job applicants in a systematic manner. Prior to advertising the job it is important to determine:

- whether the appointment is really necessary or whether the job can be absorbed by existing staff
- the tasks to be done by the job holder
- the qualifications and skills required for effective job performance
- difficulties and problems normally experienced in the job - physical demands, other personnel, administration and decision making
- qualities usually found in successful job holders

Having considered these points, it is then important to decide and write down the main terms and conditions to be offered to the successful applicant: hours of work, overtime arrangements, rates of pay and average bonuses, holiday entitlements, pension scheme contributions and benefits, fringe benefits, opportunities for training and promotion.

By having these details with you at the interview, you will be able to answer quickly and accurately the questions the candidates are most likely to ask. This is important because once terms have been offered and accepted, even only verbally, they are contractually binding and you usually cannot unilaterally change them at a later date.

If you are aware that a disabled person is attending for an interview, you should take reasonable steps to ascertain the nature of the disability and to accommodate any special needs to facilitate the interview. Try not to have any pre-conceived ideas of a disabled person's ability, and assess them on their individual merits for the specific post applied for.

You may wish to consider using an interview checklist to help you in the interview process. The purpose of an interview checklist is to create a standardised approach to considering applicants for any job. Properly applied, an interview checklist can protect an employer against complaints of discrimination. The completed interview checklists can also provide evidence of a systematic approach taken to interviewing job applicants.

### The interview

Non-urgent telephone calls should be intercepted by staff, and other interruptions kept to a minimum during interviews.

Keep in front of you the completed application form and necessary details about the job. Try to put candidates at their ease and draw out the information you require for an accurate assessment, by encouraging them to talk about their background, work experience and interests. The various aspects of personality should be explored using the interview checklist to determine how closely candidates fit the requirements of the job.

Candidates should be given an accurate picture of the job, including its less attractive features. A successful candidate who is led or allowed at interview to form unrealistically high expectations of the job is soon likely to become dissatisfied and perhaps leave. The selection process then has to be repeated.

Interviews should be conducted in such a way that all candidates feel they have had a fair hearing and opportunity to do themselves justice. Do not ask questions unrelated to the job - there are many discrimination issues in which the unwary employer can embroil itself through irrelevant probing questions. Unsuccessful candidates should be able to go away with a good impression of your company, and may be sorry (but should not be resentful) that they did not get the job.

If no decision or offer was given at the interview, candidates should be informed of the outcome as soon as possible. It is important to minute notes of the interview. This will ensure that the necessary information is available to provide a rationale should the selection be challenged. Be aware of the fact that as an employer, you may have to provide feedback to unsuccessful applicants and disclose copies of the minutes to them if requested. The employment appeals tribunal may insist that an employer disclose documents, and so it is important that there are no disparaging remarks or discriminatory comments. Please also be aware of the obligations involved with respect to this personal data under the Data Protection Acts.

### **Interview checklist**

Before the interview, note on a separate sheet the requirements of the job under the eight headings listed below. Assess candidates under each heading using a predetermined scale (e.g. 5=very good, 4=above average, 3=average, 2=below average, 1=poor).

Record comments and ratings immediately after each interview:

#### **(a) Appearance and manner**

*General appearance and impact on others:* manner, self-confidence, speech and dress.

*Company image requirements:* extent of job contact with clients or the public.

#### **(b) Qualifications and experience**

*Qualifications and experience required for the job:* are qualifications and experience too little or too great for the job? Depth of experience relevant to the job.

#### **(c) Aptitudes**

*Intelligence:* ability to think things out, problem solving, ability to absorb new information and training.

*Aptitudes:* practical, intellectual, social, physically active (check hobbies and interests); relevance to job.

The following should be utilised if relevant and necessary to the particular job in question:

(d) Motivation

*Level:* initiative, drive, persistence in overcoming problems, ability to plan, organise and achieve.

*Direction:* main goals and objectives, any ideological conflicts, personal aspirations.

*Degree of supervision exercised:* (i) over job-holder (ii) by job-holder

*Need to set and achieve own targets.*

(Compare track record and achievements to date with background and opportunities).

(e) Emotional adjustment

*Ability to get on and work with others:* superior/subordinate relationships, other team members, customers and clients

*Sensitivity to others:* dominant/submissive, sociable/reserved.

*Emotional stability:* ability to cope with change, stress and frustration.

*Ability to carry responsibility:* ability to persuade and motivate others.

*Maturity:* realism of outlook and aims.

*Reliability:* conscientiousness, integrity.

(f) Health

*Physical demands of job:* light/heavy, clean/dirty, indoor/outdoor, hot/cold.

*General health and sickness:* absence record over last 2 to 5 years: visits to doctor during past year.

*Physical and mental health:* consider specific job requirements and whether any reasonable adjustment may be made.

(g) Domestic circumstances

*Travel to work:* housing, mobility; reactions of family to prospective job.

There may be other aspects to be considered such as driving licence, shift work, union membership, travel and overnight stays away from home, etc.

Comments should be recorded immediately after the interview and each checklist dated and signed by the interviewers.

However note that the Employment Equality Acts 1998 - 2008 make it unlawful to ask questions relating to health or disability (or to use health questionnaires) before a job offer is made. Please see the chapter on 'Application forms' for more information on this.

## Background checks

### Employee references

Checking references is usually done at or near the end of the interview process. Too often it is not done well or thoroughly enough. When you have reached the stage in which you are close to making a decision on a candidate, ask him or her to supply several references, one of which should be his or her previous employer.

Ask the referee factual questions about the candidate's previous or existing job, e.g. job held, length of service, timekeeping, attendance, main duties and responsibilities, attitude towards work and the company and, a key question, would he/she re-employ the candidate? If you are contacting the applicant's current employer, you should first ask the applicant if it would be acceptable to do so.

If a reply is not received within 10 to 14 days, or if there is some urgency, telephone the referee. All follow-up calls should be directed to one person and should be kept in line with the statement of employment and no further information given.

### Checking references

It may be time consuming, but thorough checking is the only way to be sure of the person you are employing. Even if the references are glowing, you must take the trouble to see if they are real - it has been known for applicants to fake references and qualifications.

- Ask to see originals of training certificates and if this is the applicant's first job try if possible to speak to his or her college head or teacher.
- Check CVs for gaps. An employer needs to be able to account for your prospective employee's whole career. It is easy to miss things out and try to cover up jobs that went wrong. You need to be ruthless in checking that, on the CV, the candidate has been completely truthful in giving names and dates of previous employment. Job lengths are often extended to cover mistakes - you need to be aware of them.
- If this is an applicant's first job, and the job involves working with children or vulnerable adults, then the employer should speak to two character references that are independent of the applicant's family and must also perform a criminal records check.
- Remember when looking at written references that employers often leave out details that they were not happy with, sticking to things that they can praise. It is often only by telephoning that you can uncover the whole truth about an applicant's past performance.

The Garda Central Vetting Unit deals with request for Garda clearance checks on individuals.

## **Interviewing previous employers**

When you telephone referees, make it clear that you are speaking in complete confidence, and as a fellow employer, you would appreciate their honesty. You must check that the written reference, (if you have one), matches what the referee tells you. It is useful to have prepared a list of questions or points that you want to discuss.

A straightforward list would contain the following questions:

- How long did the applicant work for the previous employer?
- What were the applicant's duties?
- What did the previous employer best like about the applicant?
- What did the previous employer least like about the applicant?
- How did the applicant cope with emergencies?
- Did the applicant take any sick days?
- Was the applicant punctual?
- What was the quality of the applicant's work?
- Was the applicant honest?
- Would you re-employ the applicant?

If you find that the referee becomes less forthcoming on certain points, you should press them if you feel they are holding any information back.

## Supplying a reference

### How to supply a reference

It is good practice to provide references regarding the employment of current or past employees, when requested by another employer or potential lender.

### Inaccurate or defamatory references

An inaccurate or defamatory employment reference can be the subject of an action for negligence or defamation against the employer and/or the individual author, and therefore the author of a reference owes a 'duty of care' to the person about whom it is written. Where the author of a reference is proven to have acted negligently, the subject of the reference does not have to prove 'actual loss' of employment, but only that he/she has lost a 'reasonable chance' of employment and thereby sustained loss. A duty of care is also owed to the recipient of the reference, who may be able to sue the individual referee and the employer for damages if the information contained in the reference is inaccurate or misleading.

Case law also indicates that a current or recent employee may have a claim for discrimination or victimisation, if the refusal to provide a reference is based on any of the nine discriminatory grounds.

### Writing the reference

There are two principal reasons for an employer requesting a reference for a prospective employee:

- to confirm the accuracy of statements made in his/her application
- to provide opinions as to the candidate's suitability for the post in question, and his/her potential for the future

In responding to a reference request, the facts about an individual's employment history and any opinion of his/her ability to undertake a new role should not be confused. If an opinion is offered regarding an individual's abilities, the reasoning for such a view should be made clear. If challenged, the author would need to provide evidence to support his/her view.

In writing a reference, the author should always indicate how long he/she has known the individual, and in what capacity, and ensure that the facts stated about an individual are correct. The author should not include any facts of which he/she is unsure - if in doubt, leave it out.

If asked to express an opinion on an issue about which the author cannot make an unequivocal statement, for example, regarding an individual's honesty and integrity, it is appropriate to use a phrase such as 'I know of nothing that would lead me to question X's honesty.'



As a general rule, only comments on an individual's performance or ability that have already been the subject of discussion with him/her should be included.

References should be marked 'confidential' to the addressee.

A reference should contain the following disclaimer in its final paragraph:

*'In accordance with our normal practice this reference is given in good faith and in confidence, without legal liability on the part of the author or the company.'*

Under the Data Protection Acts, individuals who make a 'Subject access request' have a right to see references written about them by their current or past employer, and those writing references should take this into account.

Care should be taken not to refer to spent criminal convictions in references.

### **Telephone or verbal references**

Although requests for telephone or verbal references are frequently received, such requests should be declined other than in exceptional circumstances, since information given in this way may be misinterpreted in its transmission to the interview panel. If, exceptionally, a verbal reference is given, steps should be taken to verify the identity of the enquirer, and notes should be kept of the conversation. As previously mentioned, all follow up calls should be directed to one person and kept in line with the statement of employment.

### **Unsolicited references**

It is generally inadvisable to provide unsolicited references addressed 'to whom it may concern'. If exceptionally, such references are provided, they should be limited to factual statements such as dates of employment, sickness record, capacity in which employed and reason for leaving, if known.

## Accepting and rejecting

### **The job offer letter**

Any job offer or appointment should be confirmed in a letter setting out the main terms and conditions of employment. If you offer the job before taking up references and checking qualifications you should state that the offer is subject to the references and qualifications being satisfactory to you. The applicant should be asked to confirm in writing his/her acceptance of the job on the terms offered. This can be done by enclosing a copy of the letter which the candidate is asked to countersign and return.

The letter should set out:

- the position that is being offered
- the remuneration
- the date of commencement of employment (if agreed)
- the location
- any conditions to which the offer is subject
- the timescale and procedure for acceptance/rejection of the offer

The letter may include other relevant details of terms and conditions of employment, acting as the first part of the employment contract. You may also specify any items or documentation you may wish the new employee to bring with them on their first day, e.g. birth & marriage certificates, passport, P45 etc.

### **Notifying an unsuccessful candidate**

All unsuccessful job applicants should be informed as soon as possible of the company's decision not to employ them.

If a similar vacancy is likely to occur in the foreseeable future, any good applications should be put in a holding file so that they are readily available if another vacancy arises, or if the chosen candidate decides not to accept the job offered.

## Induction of a new employee

### Employee induction

To help new employees adapt themselves as quickly as possible to your company, a brief induction training programme is useful. Its purpose is to provide basic information about the company and the job. Some of the following may be relevant:

- introduce new recruits to the business, new work colleagues and workplace area and environment
- give new recruits information about the business and their job role
- provide details of their terms and conditions of employment
- provide details of the business's rules, policies and procedures
- identify and inform the new recruit of health and safety, emergency and security protocols and procedures
- show the new recruit around the business premises and staff facilities

### Personnel records

Once an employee has been engaged, open a personnel file and keep on file the job application form, job description, a personnel record card and all correspondence with the individual relating to his/her employment.

Please note that as soon as you begin storing information in personal records, this information falls under the Data Protection Acts. Under this legislation, you, as an employer, have certain obligations in the collection of this data. See the Data Protection Commissioners website for more information.

## Age discrimination

The introduction of legislation outlawing age discrimination under the Employment Equality Acts 1998 - 2008 and the Equal Status Acts 2000 - 2004 has a particular impact on recruitment.

### **What is age discrimination?**

Age discrimination can be explained as occurring when someone treats a person less favourably because of that person's age, and uses this as a basis for prejudice against and unfair treatment of that person.

Age discrimination in employment can:

- affect anybody regardless of how old they are
- reduce employment prospects for older people, younger people and parents returning to work after a period of full-time childcare
- favour people in the age group 25 to 35
- prevent the full consideration of abilities, potential and experience of employees

### **Job descriptions and advertisements**

Particular care should be taken when creating a job description and advertisement. Some organisations are now specifying the experience required for the role in detail, such as 'a need to demonstrate experience of managing a team of 5+ employees' (rather than '5 years' experience in managing a team of employees'), to avoid breaching age discrimination legislation whilst still targeting the desired type of candidate. Phrases such as 'requires youthful enthusiasm' should be avoided – instead, emphasis should be placed on the requirement for an enthusiastic applicant. Therefore, careful drafting is essential.

### **Application forms and interviews**

As a result of the legislation it is generally good practice not to ask an applicant about:

- their age
- dates of any qualifications, previous employment or training
- any other information which may directly or indirectly relate to their age

Remember that age discrimination legislation applies to young workers/applicants as well as older members of the workforce.

If you still believe that this information is necessary then you should consider asking the candidate for a copy of his/her CV. However, even if the applicant voluntarily provides age-related information (such as stating it in his/her CV), this should not be used as a basis of

any decision and should effectively be ignored, unless there is a lawful reason for discriminating on the grounds of an applicant's age (see below).

Some regulators may require employers to provide age-related information, and if this affects you, we suggest that you send the applicant two application forms, one of which should include the information requested by the regulator. This application form should be used for the regulator's purposes only.

Interviewers and those concerned with selection must not be subjective on the basis of physical characteristics and unfounded assumptions, and must ensure their decisions are based on objective criteria, relevant to the job and merit.

### **Removal of the default retirement age**

Employers are no longer legally allowed to reject, on the basis of age, applicants who will be 65 or older within six months of applying for the job. This is because provisions in age discrimination legislation that stated that the default retirement age is 65 (therefore allowing employers to lawfully terminate the employment of workers when they turn 65) has been revoked.

### **Lawful discrimination**

Direct discrimination is allowed in circumstances where it is required, in order to comply with another law or a genuine occupational requirement of the role. For example, a dramatic performance or other form of entertainment that requires a person from a particular age group for authenticity.

### **Employment agencies**

If you are using an employment agency then you should ensure that they are not breaching any discrimination legislation as you will be held liable by an applicant for their actions if they have discriminated against them.

## Unusual employees

### Employing staff with criminal convictions

It is essential for employers to be careful in selecting staff. No employer can be faulted for asking the question 'Do you have any criminal convictions?' in a job application form, provided that the employer has implemented adequate procedures to deal with the answer in terms of the Data Protection Acts. However, problems can arise if the employer does not understand its responsibilities under this legislation. You should use a criminal convictions declaration form for job applicants to aid you through this process.

If an employer asks whether an applicant has any criminal convictions in a job application form that the employer should have facilities to protect the confidentiality of this information, and properly handle the responses in accordance with the Data Protection Acts. Care should therefore be taken that a conviction which is not 'spent' when it is first recorded in the personnel files is properly handled when it has become 'spent'.

The law makes it a criminal offence for some people who fail to notify their employers they are guilty of certain criminal offences before taking a job or performing a service. This duty to notify your employer relates primarily to sex offenders guilty of offences committed in the Republic of Ireland and abroad. Section 26 of the Sex Offenders Act 2001 makes it an offence for a sex offender to 'apply for work or to perform a service (including State work or service) which involves having unsupervised access to, or contact with children or mentally impaired people without telling the prospective employer or contractor that you are a sex offender..'.

Employers who ask whether an applicant has any criminal convictions in a job application form should also indicate in the form that they do not expect applicants to disclose spent convictions.

### Garda vetting

The Garda Central Vetting Unit deals with requests to provide information on certain prospective employees. It only deals with requests from organisations that are registered with the Unit.

When a prospective employee is vetted by the Gardaí the details of all convictions and prosecutions are disclosed to the authorised liaison person in the registered organisation. The details will include all completed prosecutions whether or not they were successful and will also include any pending prosecutions. Details of the Garda vetting procedure are available on [garda.ie](http://garda.ie).

Criminal record checks should be obtained if the applicant is applying for an excepted post or if they will be working with children and/or vulnerable adults. It should be obtained with the knowledge and consent of the applicant.

## **Types of employees vetted**

The National Vetting Bureau (Children and Vulnerable Persons) Act 2012 lists the work or activities where people working with children and vulnerable adult will require vetting.

These include:

- childcare services – see also ‘Further information’ below
- schools
- hospitals and health services
- residential services or accommodation for children or vulnerable persons
- treatment, therapy or counselling services for children or vulnerable persons
- provision of leisure, sporting or physical activities to children or vulnerable persons
- promotion of religious beliefs