

Practitioner Toolkit

Inherent Requirements of the Job

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Inherent Requirements of the Job

Do you want to work in my shoe store?

I have a shoe store. I'd call it a small business. It's in a major regional centre which is serviced by good public transport. I open at 8.30 each morning (except on Sunday, when I open at 10.00am), and I close at 5.30pm (except on Thursday, when I close at 9.00pm, and Sunday when I close at 4.00pm).

I sell all kinds of shoes: men's shoes, women's shoes, children's shoes. I sell boots: hiking boots, cricket boots, and footy boots. I sell sandals and thongs. I sell shoes, boots, sandals and thongs in all sizes, styles and colours. My customers come from all walks of life – men, women, young people, and older people. They have different interests and hobbies. Some were born in Australia and some have come from overseas. Some have big feet, some have wide feet, some have small feet and some have narrow feet.

I want to recruit a sales assistant. It's a full time/casual position, so they'll be working 35 hours per week. The days and times they work will be flexible, but they can expect to do some Thursday evenings and some Sundays. There are usually two staff working at any time. It's a sales assistant job – selling shoes. Here are my requirements:

- Good communication and customer contact skills
- Money handling skills
- The ability to learn about the product lines (to help customers with their selections)
- Ability to manage stock and orders
- Ability to learn the registers, computer systems and credit card facilities
- Personal qualities such as honesty, reliability, initiative and a good work ethic
- Being available for 35 hpw within store opening hours
- Driver's licence and own car (so you can get to work)
- Year 12 education
- Green eyes
- No criminal record

They seem pretty fair don't they? After all, I'm the employer and I can employ who I like can't I?

Well, yes you can, but you need to carefully identify the inherent, or essential, requirements so that you only assess people on their ability to perform the essential requirements of the job. To advertise for, and assess applicants, on factors other than their ability to perform the essential requirements of the job may lead to complaints of discriminatory employment practices.

So let's have a closer look at this job. Firstly, a job is made up of two parts: the *tasks* and the *other requirements*.

The *tasks* in this job are the *things you do*:

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- Handling money
- Manage stock and orders
- Learning about the product lines and helping customers with their selections
- using the registers, computer systems and credit card facilities

The *other requirements* are the *non-task components* of the job:

- Honesty, reliability, initiative and a good work ethic
- Driver's licence and own car
- Year 12 education
- Green eyes
- No criminal record

Great – I'm glad we've got that sorted! Now we can start our recruitment, unless of course you see any problems with my requirements?

The inherent requirements of the job are the essential requirements, so the first step in any job recruitment exercise is for you to work with your employer to clearly determine what the 'inherent' requirements are – the things that the job requires of the person performing it.

We know our job is in a shoe shop, and we know where the shoe shop is and when it's open. We know what duties the successful candidate will perform.

One way to help work out the essential requirements is to look at the requirements that our employer has given us and ask ourselves: "could someone without this requirement do this job?"

Let's work through the requirements and think about which ones are essential.

Employer Requirement:	My Thoughts –'Inherent Requirement'?
Good communication and customer contact skills	Agreed. This is a public contact position. The sales staff are the first point of contact, and unsatisfactory service is likely to damage the reputation and financial viability of the store.
Money handling skills	Agreed. If you are a customer you expect a salesperson to be able to calculate the cost of purchase, apply any discounts, handle money and give you the correct change.
The ability to learn about the product lines	Agreed. If you are in the sales part of the business you need to have a good product knowledge.
Manage stock and orders	Agreed. It's important that staff, especially in a small business, be able to ensure that sufficient stock is on hand, and to order items as required.
The ability to learn the registers, computer systems and credit card facilities	Agreed. Technology is an important part of many businesses – so it's important that staff have the ability to use the systems.
Personal qualities such as honesty, reliability, initiative and a good work ethic	Agreed. It's a small business, and staff need to be trustworthy. There is usually only two staff in the store which means supervision will be limited and at times the new staff member will be responsible for opening and closing the store.

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Being available for 35 hpw within store opening hours	Agreed. Casual employment and flexible hours are common to positions in the retail industry.
Driver's licence and own car (so you can get to work)	Don't agree. If the requirement for a licence and own car is just so the staff member can get to work – and there is no requirement to use a car as part of the job – then I don't see it as a fair requirement. The job seeker is responsible for making their 'to and from' work travel arrangements. They may use public transport or a motorcycle. They may use a bicycle or may get a lift to work. They can do the job without having a driver's licence and their own car. The requirement of 'Being Available for 35hpw within store opening hours' is a more appropriate requirement. The driver's licence/own car requirement could be seen as discriminating against people who don't have a car and licence.
Year 12 education	Don't agree. The requirement is really in the ability of the person to handle money, act with integrity, be available for work, know the product lines and use the technology. People with education levels below Year 12 may also be able to demonstrate the requirements.
Green eyes	Don't agree. I look at this the same way I look at car/ licence and Year 12. It's a bit of an extreme example, but the point is that if we assess people on factors other than their ability to do the job then we may be subject claims of discrimination.
No criminal record	Don't Agree. I think you could argue that it's an inherent requirement of the job that the person is 'trustworthy', but I think we need to look at how we might assess trustworthiness. A person who was excluded from the job on the basis of a blanket 'No Criminal Record' requirement could argue that there is no 'close and tight' relationship between their offence and this job. For example, a person with a 'driving under the influence of alcohol conviction' could argue that there is not a close link between the offence and this particular job - the job does not involve driving, and they may have significant alternative evidence of trustworthiness– for example a good work history, good job references, and no subsequent offences.

Regulated Occupations and Police Checks

For some jobs it may an inherent requirement that applicants have a specific licence, certificate or registration. These can differ between states and territories, but examples can include:

<i>It's an inherent requirement of a:</i>	<i>To have:</i>
Driving job	An appropriate licence (e.g. car, bus, truck, articulated vehicle, crane, plant operator)
Nursing job	Nursing registration
Security work	Security licence
Serving alcohol	Responsible Service of Alcohol ticket
Working on a building site	OH&S certificate (white/green card)
Scaffolder (basic)	Basic Scaffolding – SB high risk work licence
Working with vulnerable people (children, aged care, disability care)	Working with Vulnerable People/Working with Children certificate (or equivalent)



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These are just a few examples. When determining the inherent requirements it's important to work out if the occupation is regulated, such that people need a particular ticket or licence to do the job.

A police check may be done by the licencing body as part of issuing a ticket or licence. For example, before issuing a Working with Vulnerable People/ Working with Children card the issuer will arrange for a police check to be conducted, and certain offences may preclude the issuing of the card.

For some jobs there may be a legal requirement for certain types of offences to be disclosed – for example when working with children. It may be however, that the person has been denied the appropriate licence when the licensing agency assessed criminal record as part of the licensing process.

For more on this look at 'On the Record' in the **Discrimination in Employment** section of the Toolkit.

Focus on the outcome you want rather than the solution

The requirements should focus more on the 'what' than the 'how'. Think back to my requirements. I asked for someone who had completed Year 12, and who had their own car and transport.

Why did I ask for Year 12? Well, I thought someone with Year 12 would be good at handling money and using the computer systems. I also thought that completing Year 12 means that they would be responsible – after all, the job might involve working on your own sometimes.

Why did I ask for own car and licence? Well, we open late on Thursdays and on Sunday, so I'm worried that they won't be able to get here and get home.

Why did I ask for 'No Criminal Record'? We'll, people with criminal records are untrustworthy aren't they?

But what are the real requirements here? When I think about it, what I really require is someone who is:

- Good at handling money and learning the computer system
- Honest and reliable and has a good work ethic – someone I can trust
- Able to work within the hours that the store is open, including Thursday night and weekends.

So maybe these are the real requirements for my job. How they got the skills and personal qualities to do the job isn't perhaps important, and provided they can get to work – by car, bus, bicycle or train – they can meet the availability requirement.

So when working with employers, think carefully about the inherent requirements of the job, rather than the solution. Focus on what they need to do – both tasks and 'other requirements'. It's then easier to assess people solely on their ability to meet these requirements. Remember - assessing people on factors other than their ability to do the job can lead to claims of discrimination.

So the message here is that the only things that applicants should be assessed on are the *skills, abilities and personal qualities* that are seen as *essential* to do the job:

- **Having a driver's licence** *would* be an essential requirement for a job that involved driving a van to deliver parcels throughout the metropolitan area.
- **Being able to swim** *would* be an essential requirement for a lifesaver job.



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- **Being a light weight** *would* be an essential requirement for a jockey where the handicap system determines the weight that horses carry in a race.
- **Not being afraid of heights** *would* be an essential requirement for a scaffolder's job.
- **Having a Working with Vulnerable People / Working with Children card** (or equivalent) *would* be an essential requirement for a job working with children because the law requires it.
- **Having a painter's licence** is an essential requirement to work as a house painter in NSW, South Australia, Western Australia, and Queensland – here's a tip re trade work: the rules can differ by State and Territory.

But:

1. **Being tall** *shouldn't* be an essential requirement for a job picking apples when we have ladders.
2. **Being tall** *shouldn't* be an essential requirement for a ceiling plasterer's job when we have plasterer's stilts.
3. **Being built like Arnold Schwarzenegger** *shouldn't* be an essential requirement for a warehousing job when we have forklifts and lifting equipment to move heavier loads.
4. **Having perfect vision** *shouldn't* be an essential requirement for a job involving computers when many people wear glasses and we have assistive technologies such as screen readers and voice activated software.

The Disability Discrimination Act 1992 and the Australian Human Rights Commission Act 1986 play important roles in making sure that people with disability get a 'fair go', and when seeking employment are assessed solely on their ability to perform the inherent requirements of a job.

You'll learn more about the legal framework in the **Discrimination in Employment** section in our toolbox!

As employment consultants, this should be at the forefront of our thinking. When looking at jobs and job seekers, maybe the first thing we need to ask ourselves is:

1. What are the inherent requirements of the job?
2. Can my job seeker perform the inherent requirements of the job?
3. Maybe my job seeker can meet the inherent requirements but we need to 'tweak' things a bit – and work with employers to look at things like job design (the way the job is done), workplace support, assistive technologies, or workplace modification.
4. Maybe our job seeker meets some, but not all of the inherent requirements of the job – but maybe our job seeker has the ability to learn the required skills, and maybe they are eligible for a wage subsidy?