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Employers'  
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## Practical guidelines for employers for promoting equality and preventing discrimination at work in Indonesia



Book

3

# Equality In Company Practices



Indonesian  
Employers  
Association



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Labour  
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Practical guidelines for employers for promoting equality and preventing discrimination at work in Indonesia

Book

# 3

## Equality in Company Practices

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### Code of practice practical guide in five parts

Code of practice for employers
Practical Guide in five parts:
1. Equality in Employment: Key Concepts and Principles
2. Business Case for Equality
<b>3. Equality in Company Practices</b>
4. Managing Equality in the Workplace
5. External Support Resources for Equality Management at Companies

Indonesian Employers Association (APINDO)  
International Labour Office (ILO), Jakarta

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# Foreword APINDO

Principle of equality and non-discrimination at the workplace are basic labour principles that have been included in the Manpower Act, Law No. 13, 2003. Basically, the principles aim to uphold the principles of human dignity in social and economic justice. In the business community, the principles have also been accepted as universal standard in achieving market efficiency and sustainable economic development.

Policy arrangements have been made by the government to support the application of the principle of equality and non-discrimination. A number of companies also have specific policies to apply the principles. However, some challenges are still present in practice. Discriminatory practices at the workplace are often encountered. Women, minorities, and other vulnerable groups still have great possibilities to be treated in discriminatory manner.

By issuing these Code of Practice and Practical Guide for Employers for Promoting equality and preventing discrimination at work, APINDO has taken a pro-active initiative to assist the employers in Indonesia to apply the principle of equality and non-discrimination at the work place. The Code of Practice contains general principles taken from the labor law in Indonesia as well the ILO Conventions, especially the Discrimination (Employment and Occupation) Convention, 1958 (No. 111) and Equal Remuneration Convention, 1951 (No. 100). The Practical Guide contains the application such general principles into practical steps. This Practical Guide is divided into 5 booklets by theme so that it is easier to use.

We would like to thank the ILO Office Jakarta and the ILO MAMPU project that have provided technical assistance in the development and publication of this Code of Practice and Practical Guide. We hope that these two materials could offer advice and benefit not only for employers but also for APINDO's partners i.e. workers and government, to jointly implement the principle of non-discrimination and equality at work.

Jakarta, October 1<sup>st</sup>, 2013



**Sofjan Wanandi**

Chairperson

National Board of the Indonesian Employers' Association (DPN APINDO)





# Foreword ILO

Non-discrimination and equal opportunities and treatment in employment are basic labour rights and are fundamental for the achievement of social justice and sustainable economic development in Indonesia. The principle of the right to equality in employment opportunities and treatment enables persons of all races, sexes, religions, social or ethnic origin, health status or disability to work their way out of poverty and to care for their families.

Equality of opportunity and treatment in employment is an integral part of the ILO's Decent Work Agenda and the Decent Work Country Programme in Indonesia. The ILO promotes opportunities for women and men to obtain decent and productive work in conditions of freedom, equity, security and human dignity. The Discrimination (Employment and Occupation) Convention, 1958 (No. 111) was adopted by ILO member States in 1958 and was ratified by Indonesia in 1999. This remains the most comprehensive international instrument dedicated to the promotion of equality of opportunity and treatment in the world of work. Following ratification of the ILO Convention, Indonesia has included principles of equality in employment in its Manpower Act (Law No.13 of 2003). ILO Convention No.111 and the Manpower Act provide the framework for the guidance provided in this Practical Guide and Code of Practice on equality in employment.

Successful employers understand that pursuing equality at work provides a competitive advantage over companies and employers who engage in discriminatory practices. Through the application of principles of equality and non-discrimination, employers are able to attract and retain the best talent, support greater innovation and enjoy productive working environments. The elimination of discrimination in employment is also an integral to pursuing a fair globalization.

This Practical Guide and Code of Practice was developed through a partnership between the ILO MAMPU project and APINDO. The Guide is divided into five separate booklets. It has been designed to support practical understanding by employers on how to apply principles of equality in employment in their workplaces.

It is our hope that this Guide and Code of Practice for employers on promoting equality and preventing discrimination at work in Indonesia will inspire employers to promote and realize principles of equality and non-discrimination in their workplaces.

October 1<sup>st</sup>, 2013



**Peter van Rooij**  
Director, ILO Jakarta Office

## Foreword

The ILO MAMPU – Access to Employment and Decent Work for Women Project is promoting equality in employment for women workers. This is being pursued through various strategies, including through partnerships and capacity building with employers in Indonesia. Employers' commitment to addressing discrimination in employment and active promotion of equal employment opportunities are crucial steps towards achieving substantive equality for women in Indonesia.

Women who are from minority ethnic or religious groups or who have a disability or health issue such as HIV and AIDs are often vulnerable to multiple forms of discrimination and face a double disadvantage in the labour market. Recognizing the particular vulnerabilities of these women and that gender-based discrimination is only one of many forms of discrimination found in employment, this practical Guide and Code of Practice, developed with APINDO, provide guidance to employers on how to prevent and address discrimination in employment based on a range of grounds including sex, ethnicity, religion, race, social origin, national extraction, health status, disability and political opinion.

The Project would like to thank APINDO for its commitment to pursuing equality in employment and for the lead role it has taken in developing and disseminating practical guidance on equality of opportunities and treatment to employers in Indonesia.

The development of guidelines for employers on equality and non-discrimination in employment initially began in China through the work of Ms Marja Paavilainen, Ms Nelien Haspels and Mr Tim De Meyer. The MAMPU project would like to thank colleagues in the ILO Decent Work Team for their contribution to the development of this Guide and Code of Practice.

We would also like to express our gratitude to Australian Aid, the donor of the ILO MAMPU Project, for their generous support and commitment to promoting equality in employment for women in Indonesia.

It is our hope that employers will use this Guide and Code of Practice in their hiring, firing and human resource decision-making processes in the future.

October 1<sup>st</sup>, 2013



**Miranda Fajerman,**

Chief Technical Adviser

MAMPU – Access to Employment and Decent Work for Women Project, ILO Jakarta

# INTRODUCTION

It is with great pleasure that the Indonesian Employers' Association (APINDO) in cooperation with the International Labour Office (ILO), presents this Code of practice and the accompanying Guide booklets, to assist employers in promoting equality and preventing discrimination at work in Indonesia.

The Guide comprises five booklets:

1. Equality in Employment: Key Concepts and Principles
2. Business Case for Equality
3. Equality in Company Practices
4. Managing Equality in the Workplace
5. External Support Resources for Equality Management at Companies

We hope that you use this Guide and find it effective. We welcome feedback on subsequent improvements in your equality and non-discrimination policies.



# 1. FAIR RECRUITMENT PRACTICES

International experience shows that – consciously and unconsciously – discrimination occurs more often during the recruitment process than in any other human resource practice. This sometimes prevents better qualified and suitable workers from accessing jobs. For this reason, ensuring that recruitment policies and practices are free from discrimination is of key importance for realizing an equal workplace.

Non-discriminatory recruitment practices bring considerable benefits to companies. Hiring the right person for the job is important because fair employers recognize that the right person on the job will:

- ◆ Be more productive.
- ◆ Learn faster.
- ◆ Require less supervision and training.
- ◆ Be more satisfied with his or her job and stay longer.
- ◆ Free up the manager's/supervisor's time to manage.<sup>1</sup>

The selection process may contain several elements, for example, development of **job descriptions, job advertisements** and **application forms**, carrying out **aptitude tests** and **job interviews** and, in some cases, **medical and psychological examinations**. The employers should follow the guidelines set out in this guide and the *Code of practice for employers on promoting equality and preventing discrimination at work* issued by APINDO in cooperation with the ILO at all stages of the recruitment process to keep the selection process fair and transparent. All policies and practices related to the recruitment process should be reviewed in consultation with workers' representatives.

## 1.1. Recruitment documents: Job descriptions, job advertisements and application forms

### Overview

In most organizations the recruitment process starts with preparation of recruitment documents such as a job description, a job advertisement and an application form.

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<sup>1</sup> See European Commission: *Continuing the diversity journey: Business practices, perspectives and benefits* (2008); Singapore Centre for Fair Employment, *Fair employment: Leading fair employment practices handbook* (Singapura, 2009).

To ensure that recruitment decisions are based on merit, employers should prepare **job descriptions** for all jobs before initiating the recruitment process. Job descriptions describe the main tasks and responsibilities of the position and the specific skills and experience needed to perform the role.

**Job advertisements** should reflect the job description, and clearly state the objective selection criteria against which the suitability of the candidates for the job will be assessed. The criteria should principally be related to qualifications, skills, knowledge and experience. If the company is implementing affirmative action measures, such as specific recruitment programmes, these should be mentioned in the job advertisement.

It is good practice to include an **equality statement** in the job advertisement, such as ‘we are an equal opportunities employer and welcome applications from all qualified persons’ or ‘this post is equally open to persons with disabilities’. Strategic communication can also be used to encourage applicants from under-represented groups to apply for the post, even if the job could be considered a “non-traditional occupation” for member of that group, for example, ‘women and men and persons from all ethnicities are encouraged to apply’.

Employers should avoid recruitment solely on the basis of personal recommendations by existing staff. All vacancies should be advertised openly and widely disseminated to attract the widest range of job applicants.

The fields in **job application forms** should only ask information relevant to assessing an applicant’s suitability for the job in question. This is necessary to ensure that each job application will be assessed fairly and based on merit. Questions which seek irrelevant personal information such as family situation, age of children, marital status, plans to have children and so on should not be asked. New recruits can be asked to provide personal information for administrative purposes after recruitment.

## Job Descriptions - Guidelines

- Job descriptions should describe the main **tasks** and **responsibilities** of the job. Include also the **title** of the job, and describe who the employee will work with and report to.
- Describe carefully the specific **skills, abilities, knowledge, education and experience** needed to perform the key tasks and responsibilities of the job. For example, if there is a genuine need for an applicant to have a driving license, to be able to travel frequently, or have an ability to undertake physically strenuous tasks these should be explained.
- Do not overstate the requirements and duties of a job. This may discourage certain qualified applicants from applying (e.g. pregnant women, persons with family responsibilities or persons with a disability).
- Do not define specific educational qualifications, except if the law requires it for the position. Allow people to offer relevant experience from any part of their life, not just qualifications or previous employment.

- Do **not** state requirements related to **sex, age, ethnicity, religion, social status, marital status** or other irrelevant personal characteristics, as anybody who is capable of doing the job is equally eligible to apply. Requiring the applicant to have a specific personal characteristic (e.g. specific sex, religion, absence of a specific impairment or disability) is only legitimate if this characteristic is an **inherent requirement of the job**. Only if this requirement is absolutely necessary for the job to be performed correctly, can it be stated in a job description and job advertisement. 📖 **See Management tip 9. When can a personal characteristic be an inherent requirement of the job?**
- Use neutral language and job titles, e.g. “camera operator” instead of “cameraman”. If no neutral titles are available, include both female and male titles, e.g. “waiter/waitress” and “saleswoman/salesman”.
- When defining the duties and tasks of the position, be specific. Refer to the actual tasks that need to be performed, rather than determining the characteristics of a person that may be needed to fulfill the anticipated tasks (for example – ‘needs to lift and move heavy items’, rather than ‘needs to be physically fit and strong’. Assessment of the characteristics of a person to perform the tasks will come later, when assessing the suitability of individuals to perform the full job description.

## Job Advertisements - Guidelines

- Job advertisements should provide sufficient information about the job vacancy: e.g. indication of wages, location, and the key tasks and responsibilities, as described in the job description.
- State clearly the **selection criteria against which the suitability of the candidates for the job will be assessed**. The criteria should relate to qualifications, skills, knowledge and experience. Ensure that all these criteria are objective, clearly defined and ranked in the order of priority. Describe in detail the specific abilities needed in the job, such as ability to travel frequently.
- Do not state any requirements related to the sex, age, ethnicity, religion or other personal characteristics of persons that are not related to the job. The advertisement should not include any drawings or photos that could give the impression that only persons of certain sex, ethnicity etc. is sought or preferred by the employer.
- If the enterprise is implementing **affirmative action measures**, such as specific recruitment programmes targeting under-represented groups of workers (e.g. women or ethnic minorities), these should be mentioned in the job advertisement to encourage members of these groups to apply.
- It is a good practice to include an **equality statement** in the job advertisement, such as ‘we are an equal opportunity employer and welcome applications from all qualified persons’.
- Clearly define how applicants should apply, closing date and interview dates.



## Placing Job Advertisements - Guidelines

- The job advertisement should be widely disseminated to attract the widest range of job applicants.
- Advertisements should not be posted in places where only some groups of applicants can see them, e.g. male locker rooms, women's magazines etc.
- Targeted media can be used to attract the right level of applicants in the job market (e.g. specialized newspapers, professional journals, student magazines etc.).
- As an **affirmative action measure** to attract applicants from a previously under-represented section of labour force, advertisements can be distributed through targeted channels, e.g. local ethnic communities or support groups for people with disabilities. 📖 **See Section 8.3** *Define an Equality Action Plan*.

## Guidelines for developing job application forms

- Job application forms should only ask information that is directly relevant to the job requirements, such as **work experience, skills, abilities, education, relevant professional qualifications** etc.
- The questions should focus on assessing the applicant's **ability** to perform the job, not on eliciting information about the applicant's person, e.g. his or her disability, or the province they come from.
- If the position requires a special commitment, such as a willingness to travel frequently, the application form should ask about applicants' ability and willingness to do so.
- The application form should not ask questions related to applicant's marital status, family situation, spouse's employment and salary, number or age of children, pregnancy or intention to become pregnant. Questions related to ethnicity, race, religion or social origin of the applicant should also not be asked.
- Applicants should not be asked to provide personal medical information. Health checks, if absolutely necessary, can be performed at a later stage.
- Persons with a disability should not be asked for to supply information that persons without a disability would not ordinarily be requested to provide.
- Applicants should **not** be asked to submit a **photograph** with their application, unless the physical appearance can legitimately be considered as an inherent requirement of the job.<sup>2</sup>

2 These guidelines are adapted from ACAS: *Delivering equality and diversity* (London, 2009); European Commission: *Diversity at work - A guide for SMEs* (2009); Hong Kong Equal Opportunities Commission: "Pre-hiring and post-hiring procedures", "Recruitment advertisements", "The use of consistent selection criteria" dan "Guidelines for application forms design", dalam *Good management practice series* (Hongkong); New Zealand Employers' Federation: *A guide for employers on discrimination in employment* (Wellington, 1993); Singapore Tripartite Alliance for Fair Employment Practices (TAFEP): *Tripartite guidelines on fair employment practices* (Singapura).



## Management tip 7

### Criteria that should not be included in job advertisements

<p>Age</p>	<p>Employers should not stipulate age as a requirement for employment. Words or phrases that suggest preference for job candidates of a particular age group should also not be used in job advertisements. Examples include “young”, “youthful working environment” or “fresh school leaver/fresh graduate.”</p> <p>If the nature of the job is physically demanding such as the handling of heavy cargo, the required physical characteristics or other job-related criteria should be clearly described in the job advertisements, rather than indicating an age cut-off.</p> <p>Examples:</p> <ul style="list-style-type: none"><li>• “Candidates are required to load and unload sacks of rice of at least 10 kg each.”</li><li>• “Candidates are required to handle heavy equipment.”</li></ul>
<p>Ethnicity and origin</p>	<p>Ethnicity or origin should not be a criterion for the selection of job candidates as selection based on race is unacceptable. Job advertisements featuring statements like “Javanese preferred” or “Chinese preferred” are therefore unacceptable.</p>
<p>Language</p>	<p>If a job entails proficiency in a particular language, employers should justify the need for the requirement. This would reduce ambiguity and minimize incidence of misunderstanding between the job seekers and the recruiting party.</p> <p>Examples:</p> <ul style="list-style-type: none"><li>• “English language teacher for pre-school centre, fluency in English required.”</li><li>• “Translator for a leading Chinese language sports magazine. Proficiency in Mandarin Chinese is a must.”</li><li>• “Tour guides to take Japanese/Indian tourist groups. Knowledge of Japanese/Indian languages is essential.”</li></ul>



## Management tip 7

	<p>Sex should not be a criterion for recruitment. In addition, words or phrases that suggest preference for job candidates of a particular sex such as “female working environment” or “female nurse” should not be used in the job advertisements. Where practical requirement of the job dictates the need for employees of a particular sex, this must be supported by valid reasons.</p> <p>Example:</p> <ul style="list-style-type: none"> <li>• “Actress for a supporting female role in a play.”</li> <li>• “Women’s fashion boutique requires salesgirl to model clothes while on the job.”</li> </ul>
Marital status	<p>Marital status is an irrelevant criterion in employment; as jobs can be performed equally well by either married or single persons. Jobs that require women to remain single for a specified period of time so that they can travel or be trained intensively are not acceptable. It is for the candidate to determine whether or not they can fulfill this function. If travel or long hours of work are requirements of the job it should specify this.</p> <p>Example:</p> <ul style="list-style-type: none"> <li>• “Job requires frequent and extensive travel”</li> <li>• “Candidates will be required to be away from home for periods of up to 4 months”</li> <li>• “Position requires frequent overtime”</li> </ul>
Religion	<p>Agama tidak bisa diterima sebagai kriteria untuk perekrutan kecuali dalam kasus di mana karyawan harus melaksanakan fungsi-fungsi keagamaan sebagai bagian dari persyaratan pekerjaan. Dalam kasus semacam itu, persyaratan harus ditampilkan secara jelas dan obyektif.</p>

Source: Adapted from Singapore Tripartite Alliance for Fair Employment Practices (TAFEP): Tripartite guidelines on non-discriminatory job advertisements (Singapore, 1999).



## Management tip 8

### When can a personal characteristic be an inherent requirement of the job?

**Inherent requirements of the job** refer to the necessary, objective and proportionate requirements that an applicant or employee needs to have in order to be able to perform the essential functions, duties and responsibilities of the job in question. In some exceptional cases a personal characteristic of an applicant or employee, such as **sex, religion or absence of a specific impairment or disability**, may be an inherent requirement of the job. In these cases distinction, exclusion or preference based on these personal characteristics shall not be deemed to be discrimination.

Examples:

- Absence of vision impairment is an inherent requirement of a job for pilots.
- A theater may set sex requirements when hiring actors to perform female or male roles in dramatic performances to ensure authenticity of the performance.
- To ensure privacy and decency, sex can be an inherent requirement of the job of an attendant in men's and women's changing rooms.
- A religious school may require that teachers leading pupils in prayer need to confess a religion.
- Employees working in a halal kitchen must be Muslim and certified to do that job in accordance with the religious practice.
- Political opinion may be an inherent requirement for high level positions in the government.

The inherent requirements of the job need to be assessed on a **case-by-case basis**. The focus should be on assessing the content of the position in question, not the organization as a whole. E.g. a religious school can only require staff involved in religious functions confess a religion. It would be discrimination to set any criteria on religion on e.g. clerical staff or maintenance personnel.

Source: ILO: *Equality and non-discrimination at work in East and South East Asia: Guide* (Bangkok, 2011).

## 1.2. Short listing

Short listing and selection of candidates should be done on the basis of a **consistent selection criteria**. The selection criteria should be developed on the basis of the job description, and it should set out the qualifications, skills, knowledge and personal characteristics required for effective performance of the job. The selection criteria should be objective, clearly defined and **ranked** in order of priority. **Measurable standards** should be defined for assessing candidates against all selection criteria.

Clearly defined objective selection criteria will help reduce bias in the short-listing process. The panel reviewing the applications should discard all stereotyped or traditional assumptions about abilities and aptitudes of different kinds of people, and examine the individual suitability of all applicants as objectively as possible. 📖 **See Management tip 10.** *Be aware of your bias* below.

Team diversity and company affirmative action policies should also be given adequate attention in the process of short listing. To avoid women and men being in segregated occupations, employers need to proactively seek to employ both men and women in all occupations even if only men or only women have traditionally performed such jobs.

### Guidelines for short listing

- To avoid prejudice or bias the short listing should preferably be done by a review panel, not just one person.
- Short listing should be done on the basis on the objective selection criteria outlined for the post. The suitability of candidates should be assessed in an objective manner against measureable standards defined for each selection criteria.
- Judge all applicants on the same criteria, e.g. no higher requirements for women applicants.
- Avoid any personal judgments and assumptions, and review your scoring results with other members of the panel to check that points have been awarded on the evidence alone.
- Train persons involved in short listing in non-discriminatory selection methods, and are familiar with the relevant legal provisions.<sup>3</sup>

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3 The guidelines are adapted from See ACAS: *Delivering equality and diversity* (London, 2009); European Commission: *Diversity at work - A guide for SMEs* (2009); Hong Kong Equal Opportunities Commission: "The use of consistent selection criteria" and "Pre-hiring and post-hiring procedures", in *Good management practice series* (Hong Kong); New Zealand Employers' Federation: *A guide for employers on discrimination in employment* (Wellington, 1993).

### 1.3. Selection and aptitude tests

Well-designed, properly administered and professionally validated selection or aptitude tests can be a useful method of predicting candidates' performance in a particular job. If selection tests are used, employers should ensure that they are relevant to the job requirements and measure the candidates' actual ability to do the job in question.

Selection tests should be administered by staff trained in assessment methodologies and equal opportunity and treatment at work. It is recommended that aptitude tests should only be used as one of several assessment methods. The contents and standard of the tests should be regularly reviewed to ensure that they are relevant to the job requirements and that they are free from any bias.

#### Guidelines for objective testing

- Selection and aptitude tests should correspond to the job in question, and measure the appropriate levels of the skills and abilities defined in the competency profile for the job in question. E.g. lifting ability or language skills.
- When developing and implementing written tests, special attention should be given to making sure candidates all candidates can understand the instructions. If Bahasa Indonesia is not the first language of some candidates (and it is not an inherent requirement of the job to be proficient in Bahasa Indonesia), then special provisions should be made to ensure these candidates also understand the test.
- All candidates should take the same test without exception.<sup>4</sup>

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4 The guidelines are adapted from European Commission: Diversity at work - A guide for SMEs (2009); Hong Kong Equal Opportunities Commission: "Interviewing procedure" and "Pre-hiring and post-hiring procedures", in Good management practice series (Hong Kong); UK Commission for Racial Equality: Statutory Code of Practice on Racial Equality in Employment (London, 2005).



## Case example 4.

### Discriminatory use of aptitude tests – United Kingdom

Ms. Mallidi, an Asian woman, who had worked for the Post Office on a casual basis for a number of years was asked to take a written aptitude test in order to remain in employment on a contractual basis. She failed the test, and her employment was terminated. Later Ms. Mallidi found out that white casual workers had been given temporary or permanent employment contracts without having to take the aptitude test. She felt unfairly treated and decided to bring legal proceedings claiming racial discrimination.

The tribunal found that whole batches of casual workers were given contracts without passing a test. Nor was the Post Office able to explain why workers had to sit the test at certain times, and in certain cases but not in others. The tribunal inferred that the only explanation for the Asian woman's dismissal was her race. The tribunal awarded Ms. Mallidi compensation of nearly £20,000, including £10,000 for injury to feelings.

Source: *Mallidi v The Post Office*, Case No. 2403719/98 [2001] DCLD 47.; UK Commission for Racial Equality: *Statutory code of practice on racial equality in employment* (London, 2005).

## 1.1. Job Interviews

Job interviews are often the decisive stage of the recruitment process and for this reason it is particularly important that interviews are designed and conducted in a non-discriminatory manner. Interviewers should only ask questions that are relevant to assessing an applicant's suitability for the job in question. Interviewers should be aware of their personal bias, and not stereotype candidates by making assumptions about their abilities.

### Guidelines for preparing for an interview

- Interviews should be carried out by a panel instead of by a single interviewer. Decisions by one person are more likely to be affected by personal bias.
- Decide upon the interview questions beforehand. Make sure that the questions identify the skills, experience and competences of the applicant in relation to the job description and person specification.
- Ensure that interviewers have an agreed understanding of the selection criteria and a general idea of the kind and level of information they need to obtain to satisfy the criteria.
- Develop a scoring system to judge the applicant's responses set against the specifications you have defined.

- Persons involved in interviewing should be trained in non-discriminatory selection method, and be familiar with the relevant legal provisions.

## Guidelines for organizing an interview

- The interview time and place should be set so that all shortlisted candidates are able to attend.
- Reasonable accommodation should be provided to job applicants with a disability, such as an accessible venue. 📖 **See Section 6.4** *Reasonable accommodation*.

## Guidelines for interviewing

- The interview questions should relate to the requirements of the job only. Focus on abilities, knowledge, experience and personal qualifications needed in the job.
- Do not ask questions of personal nature, e.g. about marital status or plans to have a child.
- If questions which may be perceived to be discriminatory need to be asked, e.g. due to inherent requirements of the job, the panel should explain the reasons for asking such information.
- If the position requires a commitment, such as regular overtime or willingness to travel frequently, interviewers should give full details of the job requirements and ask the candidate if they will be able to meet all the requirements. These job requirements should be discussed objectively without questions related to the applicant's marital status or family responsibilities.
- Employers may ask applicants with a disability or health condition questions about their ability to perform specific job functions or the need for any special facilities to perform the functions of the job. Applicants should not be asked to provide general information about their disability or health status that is not relevant to assessing their ability to perform the job.
- Consider what needs to be done to enable you to employ the best candidate, e.g. language training, access requirements or new equipment.<sup>5</sup>

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<sup>5</sup> The guidelines are adapted from ACAS: *Delivering equality and diversity* (London, 2009); European Commission: *Diversity at work - A guide for SMEs* (2009); Hong Kong Equal Opportunities Commission: "Interviewing procedure", in *Good management practice series* (Hong Kong); Singapore Tripartite Alliance for Fair Employment Practices (TAFEP): *Tripartite guidelines on fair employment practices* (Singapore).





## Management tip 9

### Be aware of your bias

The word “**bias**” refers to **partiality, prejudice, unfair influence, or one-sided view**. Bias hampers a person’s ability to make impartial, unprejudiced and objective decisions.

No one wants to believe – or much less admit – that they harbor biases, but there is strong research-based evidence that **our prejudices may be more pronounced than we think**. All people are naturally biased (in one way or another), as it is natural for people to feel sympathy and acceptance for things that are “familiar” and people who are “similar” to oneself.

Hidden bias can be particularly problematic in human resource management, as it may easily lead to discriminatory practices. For this reason specific attention should be paid in all human resource management practices to make sure that the decision makers’ personal bias will not unconsciously influence the decisions made. All human resource management decisions should be based on objective criteria, with adequate attention paid to team diversity and company affirmative action measures.

Staff responsible for recruitment should be trained on non-discriminatory recruitment practices. The training should also discuss the danger of making **generalizations** about the abilities and aptitudes of men, women, persons with disabilities, or persons of different age or different background. **Presumptions** about what are “men’s jobs” or “women’s jobs” and **stereotyped ideas** about the kinds of jobs that are suitable for persons with a particular background should be avoided.

Source: P. Babcock: “Detecting hidden bias”, dalam *HR magazine* (2006) Vol. 51, No.2, Februari; Hong Kong Equal Opportunities Commission: “Pre-hiring and post-hiring procedures” dan “Use of consistent selection criteria”, dalam *Good management practice series* (Hongkong).



## Case example 5.

### Gender stereotypes in Indonesia

Indonesia maintains strong traditional ideas about characteristics of women and men. The influence of culture and gender relations impacts on perceptions that certain jobs are best suited to women, while other jobs are better performed by men. These notions were embedded in Soeharto's ideology of gender relations, whereby women were seen as submissive and docile and appendages of their husbands, and persist in Indonesian culture today. This perception tends to position women's primary function as being to their husband and children rather than to their work associated with remunerated employment. As a result, women working in a whole range of occupations – from teaching to trading – have focused on their identity as wives and mothers rather than on their status as workers.

These traditional gender roles are also reflected in gender division of labour in Indonesia. The stereotyped ideas limit the choice of occupation and employment for both women and men, but are especially harmful for girls and women, as they result in barriers to employment opportunities for women. Employers should be aware of these stereotyped ideas in the society and actively avoid letting them influence employment decisions. All recruitment decisions should be based on actual abilities of individual job applicants, not on the qualities which applicants are assumed to have due to their sex.

Source: Ford, Michele, dan Parker, Lyn, *Women and Work in Indonesia* (Abingdon, 2008)



## Management tip 10

### Interview do's and don'ts

#### Age

#### Acceptable questions:

- None. Asking about years of working experience is acceptable if experience is needed for the job.

#### Unacceptable questions:

- Any question designed to discover someone's age.



## Management tip 10

<p><b>Disabilities</b></p>	<p><b>Acceptable questions:</b></p> <ul style="list-style-type: none"> <li>• Inquiries about whether the applicant has the ability to perform specific job functions. Asking the applicant to describe or demonstrate how he or she would perform job tasks.</li> <li>• Inquiries about whether the applicant will require a reasonable accommodation only when the applicant has an obvious disability, or when the applicant voluntarily discloses that he or she has a disability.</li> </ul> <p><b>Unacceptable questions:</b></p> <ul style="list-style-type: none"> <li>• General inquiries that are likely to elicit information on disabilities not related to ability to perform a specific job, such as “Do you have any disabilities?”</li> </ul>
<p><b>Education</b></p>	<p><b>Acceptable questions:</b></p> <ul style="list-style-type: none"> <li>• Inquiries regarding degrees, courses, equivalent experience, or training required for the specific job.</li> </ul> <p><b>Unacceptable questions:</b></p> <ul style="list-style-type: none"> <li>• General questions about high school or college degrees unless you can prove the educational degree inquired about is necessary to perform the job.</li> </ul>
<p><b>Employment</b></p>	<p><b>Acceptable questions:</b></p> <ul style="list-style-type: none"> <li>• Any question related to experience, strengths and weaknesses, promotions, accomplishments, current salary, salary requirements, reasons for leaving a position.</li> </ul> <p><b>Unacceptable questions:</b></p> <ul style="list-style-type: none"> <li>• None.</li> </ul>
<p><b>Family status</b></p>	<p><b>Acceptable questions:</b></p> <ul style="list-style-type: none"> <li>• Whether applicant has any activities, commitments, or responsibilities that might prevent him or her from meeting work schedules or attendance requirements. Inquiries about an applicant’s availability for evening and/or weekend work are acceptable,</li> </ul>



## Management tip 10

	<p>provided that you ask both male and female applicants, and provided that the position in fact requires or will require work on evenings and/or weekends.</p> <p><b>Unacceptable questions:</b></p> <ul style="list-style-type: none"><li>• Do not inquire about whether the applicant is married or single, number and age of children, spouse's job, spouse's or applicant's family responsibilities, child care responsibilities, support orders, pregnancy, etc.</li><li>• Do not direct questions to applicants of a particular sex - e.g., asking women about child care arrangements, or asking men about child support obligations.</li><li>• Do not ask questions about availability for evening and/or weekend work if it is not a requirement for the position. This question is likely to have a discriminatory impact on applicants with families - particularly women.</li></ul>
<b>Financial status</b>	<p><b>Acceptable questions:</b></p> <ul style="list-style-type: none"><li>• None, unless job related.</li></ul> <p><b>Unacceptable questions:</b></p> <ul style="list-style-type: none"><li>• Inquiries about an applicant's financial condition, bank accounts, credit history, or credit rating that do not relate to the job in question. Good credit requirements have been challenged as discriminatory because they may have an adverse impact on minorities.</li><li>• Questions about home ownership or car ownership (unless owning a car is required for the job).</li></ul>
<b>Height and weight</b>	<p><b>Acceptable questions:</b></p> <ul style="list-style-type: none"><li>• Inquiries about height or weight requirements necessary for the job or about whether applicant has the ability to perform specific job functions (without mentioning the person's height or weight).</li><li>• Must be able to prove that a specific minimum or maximum height or weight is required to perform the job.</li></ul>



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	<p><b>Unacceptable questions:</b></p> <ul style="list-style-type: none"> <li>Any inquiry about height or weight not based on the actual job requirements.</li> <li>If a specific height or weight requirement is set you must be able to prove that a specific minimum or maximum height or weight is required to perform the job.</li> </ul>
<p><b>Marital status</b></p>	<p><b>Acceptable questions:</b></p> <ul style="list-style-type: none"> <li>None. Questions relating to family benefits can be made following recruitment.</li> </ul> <p><b>Unacceptable questions:</b></p> <ul style="list-style-type: none"> <li>Whether the applicant is married, single, divorced, separated, engaged, widowed.</li> </ul>
<p><b>National origin</b></p>	<p><b>Acceptable questions:</b></p> <ul style="list-style-type: none"> <li>Inquiries into applicant's ability to read, write and speak English or other foreign languages when required for a specific job.</li> </ul> <p><b>Unacceptable questions:</b></p> <ul style="list-style-type: none"> <li>Questions about applicant's lineage, ancestry, national origin, descent, place of birth or mother tongue, national origin of applicant's parents or spouse. How applicant acquired ability to read, write or speak a foreign language.</li> </ul>
<p><b>Pregnancy</b></p>	<p><b>Acceptable questions:</b></p> <ul style="list-style-type: none"> <li>Inquiries about the applicant's anticipated duration of stay on the job or anticipated absences – only if made to both male and female applicants.</li> </ul> <p><b>Unacceptable questions:</b></p> <ul style="list-style-type: none"> <li>Any question relating to pregnancy or medical history concerning pregnancy, or inquiries that might elicit answers based on pregnancy or family planning status. NOTE: To refuse to hire a woman solely because she is pregnant constitutes sex discrimination.</li> </ul>



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<b>Race or color</b>	<b>Acceptable questions:</b> <ul style="list-style-type: none"><li>• None.</li></ul> <b>Unacceptable questions:</b> <ul style="list-style-type: none"><li>• Any questions about race, color, or complexion of skin.</li></ul>
<b>Religion or creed</b>	<b>Acceptable questions:</b> <ul style="list-style-type: none"><li>• Questions about whether applicant can meet work schedule with reasonable accommodation are acceptable. If the answer reveals the applicant's religious observance or practice, let the applicant know that a reasonable effort will be made to accommodate any religious needs should he or she be hired</li><li>• Questions about whether the applicant could make minor adjustments to their display of religious symbols (eg jilbab) to meet occupational health and safety requirements for the job. Note, requiring that a person not wear religious symbols for reasons other than occupational health and safety reasons is not acceptable.</li></ul> <b>Unacceptable questions:</b> <ul style="list-style-type: none"><li>• Questions about applicant's religious denomination, religious affiliation, church, pastor, or religious holidays observed.</li><li>• Questions about whether the applicant would consider not wearing the jilbab or other religious symbols to work.</li><li>• Questions relating to the applicant's ability to read the Koran, Bible or other religious texts.</li></ul>
<b>Residence</b>	<b>Acceptable questions:</b> <ul style="list-style-type: none"><li>• Inquiries about the applicant's address needed for future contact with the applicant.</li></ul> <b>Unacceptable questions:</b> <ul style="list-style-type: none"><li>• Whether the applicant owns or rents own home (denotes economic class). Names and relationship of persons with whom the applicant resides.</li></ul>



## Management tip 10

<p><b>Sex</b></p>	<p><b>Acceptable questions:</b></p> <ul style="list-style-type: none"> <li>• None, unless sex is an inherent requirement of the job in question.</li> </ul> <p><b>Unacceptable questions:</b></p> <ul style="list-style-type: none"> <li>• Reference to the applicant's sex, if a particular sex is not an inherent requirement of the job.</li> <li>• Questions about virginity or sexual activities. These are not relevant to a person's employment.</li> </ul>
<p><b>HIV and AIDs status</b></p>	<p><b>Acceptable questions:</b></p> <ul style="list-style-type: none"> <li>• None. All jobs should have occupational health and safety regulations that prevent unsafe exposure to blood between persons.</li> </ul> <p><b>Unacceptable questions:</b></p> <ul style="list-style-type: none"> <li>• Questions that ask about the person's HIV and AIDs status. These are not relevant to a person's ability to perform work.</li> </ul>
<p><b>Union affiliation</b></p>	<p><b>Acceptable questions:</b></p> <ul style="list-style-type: none"> <li>• None.</li> </ul> <p><b>Unacceptable questions:</b></p> <ul style="list-style-type: none"> <li>• Any questions about current, previous or future intentions to be involved in trade union activities.</li> </ul>

Source: Adopted from Wake Forest University: *Guidelines for interviewing applicants*; UNC Charlotte: *Guidelines for interviewing job applicants*.

## 1.5. Pre-employment medical examinations

Pre-employment medical examinations are sometimes used as part of the recruitment process, and are usually conducted in the final stage of the recruitment process. Medical examinations should not be conducted as a matter of routine, but they can legitimately be applied in limited cases for example to assess the applicants' **ability to carry out the inherent requirements of the job** or to ensure **health and safety of co-workers and customers** (in those jobs where health requirements have been set in the law).<sup>6</sup>

An employer who requires the applicants to take a pre-employment medical examination should always explain the **lawful purpose** of such examination to the applicants. If testing cannot be justified with reference to any of the above reasons, but is required only to exclude applicants with infectious diseases or a disability, or to screen out pregnant women, this constitutes discrimination. Discrimination of pregnant women, persons with disability and persons living with HIV and AIDS is unlawful under Indonesian law.

The employer should inform the doctor or institution carrying out the examination about the purpose of the examination and the inherent requirements of the job in question. The examination should only include the medical and occupational tests that are needed to determine whether the applicant is able to carry out the inherent requirements of the job.<sup>7</sup>

### Pregnancy tests

Employers should not use pregnancy tests as a condition of hiring, except in those limited situations where the work in question is prohibited for pregnant women under the law or there is a recognized or significant risk to the health of the woman and child.<sup>8</sup> In most jobs, pregnancy does not impact on a qualified female applicant's ability to perform the job, and the employer has no legitimate reason to require the applicants to take the test. Rejecting a qualified applicant due to her pregnancy is discrimination. If the job requires working in a hazardous environment or involves physically strenuous tasks, the employer should inform all applicants about this in the job advertisement.

 **See also Sections 6.2** *Maternity protection* and **6.3** *Work and family balance*

### HIV testing

If the occupational requirements for the job in question have been stipulated in law to include absence of an infectious disease, the employer may require the applicant to undergo a medical test to check for infectious diseases. If no specific health requirements have been stipulated for the job the applicant may lawfully refuse to undergo the test. Requiring employees or job

6 ILO *Code of practice on protection of workers' personal data*, Art 6.7.

7 See Hong Kong Equal Opportunities Commission: "Pre-employment medical examinations", in *Good management practice series* (Hong Kong).


8 ILO *Maternity Protection Convention, 2000*, (No.183), Article 9.2.



applicants to take a compulsory HIV testing is strictly prohibited under the ILO *Recommendation Concerning HIV and AIDS at the World of Work, 2010* (No. 200) (Article 25) and the Ministry of Manpower and Transmigration Decree, No 68 of 2004 and Ministry of Manpower Decision No 20 of 2005 on HIV/AIDS Prevention and Control in the Workplace.

## Assessing the ability to perform the job

Employers may ask applicants to undergo an examination to test their ability to carry out the inherent requirements of the job. Both applicants with or without a disability can be asked to take a test. When assessing the physical ability of an applicant with a disability, employers should also consider whether the applicant would be able to perform the essential job functions with help of some reasonable adjustments to the work procedures or practices, such as adjustment of the work station, use of special equipment etc. Rejecting a disabled applicant who is able to perform the essential job functions with the help of reasonable accommodation would be discriminatory.

If the applicant with a disability is unable to carry out the inherent requirements of the job concerned, or the adjustments needed would cause unjustifiable hardship to the employer, the employer can lawfully reject the applicant in question.  **See also Section 6.4 Reasonable Accommodation.**

## After the medical examination

If an applicant was not offered a job after the medical examination, the employer should inform him/her clearly the reasons for this.

- ♦ If the applicant was rejected due to his/her disability, the employer should explain him/her why he/she is considered unable to carry out the inherent requirements of the job, and why the adjustments required to help him/her carry out the job would impose unjustifiable hardship upon the employer.
- ♦ If the applicant was rejected due to his/her infection, the employer should specify If the medical ground for refusal of the job is a communicable disease, the applicant should be informed by the employer of the reasonable need to protect public health.

Note that there are no conditions to justify rejecting a female applicant solely on the basis of her pregnancy, marital status or plans to have a child.

## Confidentiality of workers' health data

The clinical information supplied by the applicant to the doctor or institution conducting the medical examination is confidential and should not be disclosed to the employer without the consent of the applicant. Instead of giving full medical details of the applicant to the employer, it is more appropriate for the examining doctor or institution to give the employer a report

providing the medical information relevant to the job. Disclosure of information is justified only in light of specific job requirements or for reasons of public health or safety.<sup>9</sup>

The ILO *Code of practice on protection of workers' personal data* and the ILO *Recommendation Concerning HIV and AIDS in the World of Work, 2010* (No.200) both prohibit disclosure of information on employees' or job applicants' health status.

## **1.6. Records and post recruitment procedures**

### **Staff records**

After an applicant has been hired, the employer can collect personal information from him or her to arrange medical benefits, family allowances or education allowances, or in order to ascertain whom to notify in case of emergency. Information can be requested regarding e.g. the employee's spouse, number of children and next of kin. The employers may also request the employee to provide more detailed medical information in order to help the employee in the event of emergency. All medical information should be kept confidential and should not be released without the written consent of the employee.

### **Records on the recruitment process**

Employers are advised to retain records of short listing scores, interviews and selection tests for at least 12 months, in order to be in a position to deal with any subsequent complaints of discrimination in the selection process. It is a good practice to review the company recruitment outcomes from time to time to check that the recruitment processes remain unbiased and equal.

### **Post recruitment procedures**

Employers should inform all shortlisted candidates on the recruitment decision as soon as possible. It is a good practice to provide feedback to unsuccessful candidates if requested.<sup>10</sup>

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9 See Hong Kong Equal Opportunities Commission: "Pre-employment medical examinations", in *Good management practice series* (Hong Kong).

10 See Hong Kong Equal Opportunities Commission: "Pre-hiring and post-hiring procedures", in *Good management practice series* (Hong Kong); New Zealand Employers' Federation: *A guide for employers on discrimination in employment* (Wellington, 1993).

## 1.7. Induction training

Most companies provide new recruits with induction training to introduce them to their new work environment. Induction training should include job training, orientation, and an introduction to company policies and to the types of behavior accepted in the workplace.

An effective orientation and job training helps the new employees to understand their duties and responsibilities and the expected standards of performance. This can help to improve understanding and communication between management and workers, promote higher productivity for the enterprise and reduce potential workplace disputes. Induction also offers the employer an opportunity to learn about the needs and potential of the new recruits, so that further on-the-job training programmes can be tailored to their needs

Introduction to company policies and practices enables the new employees to understand the culture of the organization. The induction training should, among other things, familiarize the employees on the company's commitment to equal opportunity and treatment, and introduce the following areas:

- ◆ What **rights and responsibilities** the employees have under the *Labour Law* and company policies, including equality policy.
- ◆ What is acceptable and unacceptable conduct in the workplace in the light of company's policies on discipline and harassment. 📖 **See Section 6.1 Harassment.**
- ◆ What kind of mechanisms the company has for handling grievances, including complaints on discrimination or harassment against colleagues or managers 📖 **See Section 9. Dealing with discrimination related complaints.**

The induction programmes should be tailored to different needs of new employees, for example, first time entrant to the workforce, internal job change or promotion, persons returning to the workforce after time out for family responsibilities, older workers, members of particular racial groups. Where applicable, a “buddy” or mentor may be appointed to help and guide the new employee.<sup>11</sup>

## 1.8. Recruitment through employment agencies

If the employer engages an employment agency or other third party to help the company recruit staff, the employer should inform the agency about the company's commitment to equal employment. The employer should also check the human resource consultants' knowledge and use of equality practices, and advise them to comply with the company's equality policy, affirmative action measures and recruitment guidelines. This is necessary to ensure that the agency recommends candidates based on merit.

11 See UK Commission for Racial Equality: *Statutory code of practice on racial equality in employment* (London, 2005); New Zealand Employers' Federation: *A guide for employers on discrimination in employment* (Wellington, 1993).

Employers should never ask employment agencies to shortlist job applicants or select temporary staff for their use based on discriminatory selection criteria. If the user company requests the employment agency to discriminate in the selection of candidates the employment agency should remind the user company about discrimination prohibitions in the law.

## **1.9. Recruitment through other intermediaries (outsourcing and subcontracting)**

If the employer is using third parties to allocate work to persons through a sub-contracting of labour supplier arrangement, including use of homeworkers, the employer is responsible for ensuring that recruitment processes of the third party are fair, and that the terms and conditions of work of these outsourced, sub-contracted or homeworkers are no less favorable than the terms and conditions of work provided for regular employees.

In the case that the intermediary is not a legal entity, the employer is solely responsible for ensuring equality in terms of recruitment and treatment in employment. Similarly, in the case of recruitment of homeworkers through an individual (who is not a legal entity), the company is wholly responsible for the recruitment process and for ensuring non-discrimination against homeworkers in terms of recruitment processes.<sup>12</sup>

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12 See Manpower Act, articles 65-66 on outsourcing.



## 2. FAIR TREATMENT DURING EMPLOYMENT

Adhering to the principle of equal opportunity and treatment in all human resource decisions is important in ensuring that all the employees can contribute to their full capacity to the success of the company. The employers should **take good care of the best assets in their company – their people**. Fair treatment of employees in defining and assigning of work, vocational training, advancement, promotion, remuneration, granting of social benefits, discipline or termination of employment contract is also employers' legal responsibility under the Manpower Act. To guarantee fair and equal treatment of all employees, employers should follow the guidelines set out in this guide and the **Code of practice on promoting equality and treatment and preventing discrimination at work in Indonesia** issued by the APINDO in cooperation with the ILO.

“Equal treatment” of employees means that employees are compensated and rewarded in accordance with their contribution and the true value of the work they perform. It also means that all other conditions of work are defined and allocated without any discrimination. Treating employees equally makes workers feel valued and increases their well-being, commitment and loyalty.

“Equal opportunity” refers to making decisions on access to professional development, training and promotion based on merit, with adequate attention paid to diversity in the team composition. If employees know that they have as good a chance as any of their co-workers to get promoted, they are more motivated to work hard to develop their skills to the full. This in turn can lead to substantive improvements in company labour productivity. Leading companies tie merit-based performance management and the provision of training and development opportunities also to leadership development and succession planning.

### 2.1. Pay and benefits

Employers should pay employees' wages commensurate with the **value of the job they are performing**. Both the **base salary** and **entitlements to any salary increments or benefits** should be determined based on objective criteria, without interference of any discriminatory bias. The principle of “equal pay for work of equal value” applies to **all cash and in-kind benefits** paid by the employer arising from the workers' employment for both men and women. Eligibility for salary increments, benefits, facilities and services needs to be based on objective criteria and

applied in a non-discriminatory way – including for workers on non-permanent contracts such as outsourced workers, homeworkers, contract, seasonal and casual workers.

**Head of household benefits** should be provided to all employees who can demonstrate they are the main or highest income earner in their family. It should not matter whether the worker is a man or a woman to receive these benefits.

Individual wage differences due to different **performance ratings** are not in themselves discriminatory, but they should be paid based on a fair performance appraisal system without any bias or discrimination. As performance pay is much more prone to give rise to discrimination than seniority pay or other salary increments or benefits based on objective facts, employers should pay careful attention to the design and application of performance appraisal systems. Prejudice and partiality in the performance appraisal systems leads to biased performance ratings, and consequently to discrimination in payment of performance increments. 📖 **See Section 5.3 Performance management and appraisals.**

Employees should always be entitled to know how their pay is made up, including e.g. the system for calculating the performance pay.

## Guidelines for pay equity

- Ensure that your company pays all employees remuneration commensurate with the value of the job they are performing. Value of work should be defined with reference to criteria such as skills, effort, responsibility and conditions of work related to the job in question. 📖 **See Management tip 12.** *How to define the “value” of a job?*
- **Never discriminate against persons or groups of workers** by allowing the sex, race, disability, origin, trade union membership, place of workplace (eg home-based workers) or any other characteristic not related to the job influence the remuneration level of any job.
- Pay all **cash and in-kind benefits** in a non-discriminatory manner, including:
  - ◆ Increments based on seniority.
  - ◆ Housing allowances or subsidized dormitory accommodation.
  - ◆ Transportation facilities or allowances.
  - ◆ Head of household allowances and benefits and increments based on marital status.
  - ◆ Pensions.
  - ◆ Health insurance plans.
  - ◆ Commissions and bonuses.
  - ◆ Entitlement to annual leave and holiday allowances.
  - ◆ Lunch, discount travel services, or any other in kind benefit with monetary value.
  - ◆ Any other fringe benefits available to employees and workers.
  - ◆ Performance based and other bonuses.

- Make sure that the **company rules, requirements and practices** on access to the salary increments, benefits, facilities or services are objective. No distinctions should be made on the grounds of sex, race, origin, trade union membership or any other personal characteristic.
- Ensure that performance appraisal systems used to calculate the **performance pay** are designed and applied in a fair and non-discriminatory way.<sup>13</sup>



## Management tip 11

### How to define “value” of a job?

The **Ministry of Manpower and Transmigration** is currently developing *Step-by-Step Guidelines for Employers on Gender-Neutral Pay Evaluations*. Once adopted, these Guidelines should be used to evaluate and review company pay structures. Below is a brief overview of the elements involved in comparing jobs to determine the relative ‘value’ of a job.

The principle of “**equal pay for work of equal value**” was established in the ILO *Equal Remuneration Convention, 1950* (No.100), which Indonesia ratified in 1958. The Convention requires equal pay (in terms of all forms of cash, in-kind or other forms of remuneration) not only for workers performing the *same job*, but also to workers performing *different jobs* that are of “equal value”. The following criteria and job elements are often used when comparing the value of different jobs:

- ◆ **Skill:** Knowledge and abilities accumulated through education or practical experience
- ◆ **Effort:** Physical or mental effort, or physical, mental or nervous strain connected with performance of the job
- ◆ **Responsibility:** Responsibility required to perform the work, including the nature, scope and complexity of the duties, the extent to which the employer relies on the employee to perform the work, and accountability of employee to the employer for resources and for the work of other employees
- ◆ **Conditions of work:** Conditions under which the work is to be performed, including factors such as noise, heat, cold, isolation, physical danger, health hazards, and any other conditions produced by the work environment


13 ILO: *Equal remuneration: General survey of Committee of Experts on the Application of Conventions and Recommendations*, International Labour Conference, 72<sup>nd</sup> Session, (Geneva, 1986); ACAS: *Delivering equality and diversity* (London, 2009); Hong Kong Equal Opportunities Commission: “Code of practice on the Race Discrimination Ordinance” (Hong Kong, 2009); UK Commission for Racial Equality: *Statutory code of practice on racial equality in employment* (London, 2005); Hong Kong Equal Opportunities Commission: “Code of practice on the race discrimination ordinance” (Hong Kong, 2009).





## Management tip 11

At company level a **gender-neutral pay equity evaluation** can help make sure that the remuneration levels for all jobs are determined in a non-discriminatory way. Pay equity evaluations are usually done to compare pay levels of **women and men**, but the same method can be used to compare pay levels of e.g. local employees and foreign workers, or workers with undetermined duration, homeworkers and fixed duration contracts. The ILO Committee on Application of Conventions and Recommendations (CEACR) has encouraged the Indonesian government, with the cooperation of workers' and employers' organizations, to develop and promote objective job evaluation methods in Indonesia.

Low pay is usually due to deep-rooted common **perceptions about certain jobs being "less important"**, often due to the fact that they have been traditionally performed mainly by women. In Indonesia, for example differences in women's and men's income are closely associated with the gender-based division of work in the labour market and undervaluation of "women's jobs". Ensuring that all workers in the organization are paid in accordance with the value of their work helps in **preventing wage disputes** in the company.  See Section 8.2 *Conduct and equality audit* for guidance for conducting the pay equity audit.

ILO: Equal remuneration: General survey of Committee of Experts on the Application of Conventions and Recommendations, Konferensi Perburuhan Internasional, Sidang ke-72, (Jenewa, 1986); ILO Committee of Experts on the Application of Conventions and Recommendations: Direct request concerning Equal Remuneration Convention, 1951 (No.100) with respect to Indonesia (Jenewa, 2011).

## External market factors impacting on pay

Jobs which are different in nature but equal in terms of value should be remunerated the same. At the very least, differences in remuneration should not be based on the sex, ethnicity, trade union membership or any other personal characteristic of the workers. However, pay differences that can entirely be explained by labour market factors beyond the control of the employer are, in principle, not discriminatory. For example, if the value of two jobs is equal, but the employer needs to pay a premium to attract qualified candidates for one of the jobs due to scarcity of required technical skills in the labour market, paying that premium does not necessarily constitute pay discrimination. Even so, the labour market as a whole may operate in a discriminatory way if e.g. it makes it more difficult for women to obtain the technical skills in question. Therefore adjustments should be made over time to ensure workers performing work of equal value are remunerated accordingly.

In the same way, provincial wage differences may also impact on salaries in different branches of the company. While individual employers may not have much influence over these external factors affecting the pay levels, they should commit to pay equity and promote it actively within their spheres of influence. To realize the potential business benefits that equality can bring to a company, employers need to pay all their employees at a fair and equitable rate.

## 2.2. Terms and conditions of work

It is unlawful for employers to discriminate in the terms and conditions of work they offer to employees, including

- ◆ Pay and benefits. 📖 **See Section 5.1** *Pay and benefits* above.
- ◆ The assignment of work and duties.
- ◆ Hours of work, including overtime.
- ◆ Annual leave entitlement.
- ◆ Sickness leave.
- ◆ Occupational health and safety training and protection
- ◆ Opportunities for skills training.
- ◆ Maternity and paternity leave. 📖 **See Sections 6.2** *Maternity protection* and 6.3 *Work-family balance*.

Employers should assign duties to workers in an equal and fair manner. Giving some groups of workers more hazardous tasks than other employees or placing certain groups of workers under unsafe conditions of work (where greater protections can be provided), constitute discrimination. Also giving an unjust preference to some employees by continuously giving them less demanding tasks would be discriminatory. Bullying an employee by continuously assigning the least pleasant assignments to him or her can also be considered as harassment.

Employers should ensure that the workplace is safe and free from hazards, including both physical and mental elements affecting health. This includes ensuring workers who are not working at the enterprise, such as homeworkers, receive adequate training and protective equipment to ensure safe and healthy work environments.

Harassment in the workplace is a form of an occupational hazard, causing fear, stress, anxiety and physical sickness among the victims. Employers should ensure that no harassment, including sexual harassment, is tolerated in the workplace.<sup>14</sup> 📖 **See also Section 6.1** *Harassment*.

Hours of work should also be allocated in a fair manner, and all employees should have equal right to overtime compensation. Employees should never be forced to work overtime, but overtime arrangements should be negotiated allowing the workers' organizations and the employees directly concerned to present their views on the issue. Employers should not base their profitability on excessive overtime, but take care of their employees and improve their productivity through sustainable means.

It is a good practice to take workers' special needs into account when allocating work shifts and holiday periods. For example, workers belonging to ethnic minorities should be allowed to take holidays during their traditional festivals, unless this causes undue hardship to the work organization. 📖 **See also Section 6.4** *Reasonable accommodation*.

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14 ILO Occupational Safety and Health Convention, 1981 (No.155) defines health as "not merely the absence of disease or infirmity ... [but also] the physical and mental elements affecting health which are directly related to safety and hygiene at work".

## 2.3. Employment contracts and employment relationships

Employers have a responsibility to ensure equality in treatment for **ALL** employees. Including contract, seasonal, casual, outsourced and homeworkers.<sup>15</sup> Although severance pay and holiday leave may not always need to be granted to contract, casual or seasonal workers, all other forms of benefits, allowances and conditions of work should be provided to these workers.

If the homeworkers are engaged by the company (directly, or through an intermediary) and they are contributing to the core production process, the employer is directly liable for ensuring conditions of work and benefits for homeworkers are of an equal standard to those ordinary workers working in the factory.<sup>16</sup> Employers need to ensure the same standards for homeworkers including, for instance occupational health and safety training and protections, maternity protection, social security payments and benefits, minimum wages and wage increments and bonuses. Additional benefits for overtime work and additional compensation for homeworkers' use and supply of their own equipment and amenities such as electricity and water for the production process also need to be calculated and provided through additional remuneration. This will ensure homeworkers are not being discriminated against in terms of conditions or work and remuneration.

Homeworkers, outsourced workers and contract workers also have the same rights to freely associate and collectively bargain for their rights without fear of negative consequences from their employer.

## 2.4. Performance management and appraisals

Effective performance management involves establishing objective appraisal systems based on measurable and quantifiable standards. Fair appraisal systems are essential to ensure that employees are recognized, rewarded and promoted based on their merit and contribution.

The information received through fair performance appraisals **should guide the company human resource management decisions** in following areas:

1. Provide a basis for employment decisions such as salary increments, bonuses, promotions, transfers, termination and retention.
2. Identify employee potential for career development.
3. Establish relevant training and development plans.
4. Assist management in business planning by providing well-documented information on the organization's workforce.

<sup>15</sup> See *Manpower Act*, articles 65 and 66.

<sup>16</sup> See *Manpower Act*, articles 65 and 66, which requires that only non-core work can be subcontracted. In the case where non-core work is sub-contracted or outsourced, the employer is directly legally responsible for ensuring conditions of work and benefits of workers involved are provided.

Performance appraisals should focus on reviewing actual performance of specific tasks, measured against **impartial and objective standards**. It is important not to allow personal assumptions or stereotyped ideas about capabilities of different types of people affect the judgment. Biased assessment results lead very easily to discrimination. Fairness of the appraisal system is particularly important when performance is linked to promotion or a benefit, such as pay or bonuses. 📖 **See Management tip 9.** *Be aware of your bias above.*

### **Guidelines for conducting performance appraisals:**

- The performance of all staff should be periodically reviewed against fair and objective performance criteria. The purpose of the assessment is to review past work performance and to determine potential for development or promotion.
- The performance assessment criteria should be clear, objective and fair, and they should be made available to all workers.
- The performance management system and appraisal criteria should be developed in consultation with workers' organizations and the employees concerned. Employees should also be allowed to give feedback on the implementation of the appraisal system.
- The performance appraisal criteria and system should be reviewed regularly in consultation with the workers' organizations to ensure they remain relevant and free from discrimination and bias.
- Supervisors and managers should be trained on how to carry out fair appraisal of employees' work.
- During the appraisal each employee's **past performance** should be reviewed, and clear and measurable performance appraisal **goals should be set for the next period**. The individual performance goals should be mutually agreed between the employee and the supervisor/manager at the beginning of a new performance review cycle.<sup>17</sup>

## **2.5. Training and development**

Training has a central role in promoting equitable career progression among all groups of employees. For this reason it is important that employers do not discriminate in the arrangements they make for training, transfer or other development opportunities. It is a good practice to adopt a policy on training, transfer and development describing the range of development opportunities open to all staff.

Eligibility for training and development should be determined with reference to objective selection criteria. Company affirmative action measures should also be given adequate attention. The take-up of training and other development opportunities should be monitored regularly to identify disparities between different groups of workers by e.g. sex, disability or

<sup>17</sup> Guidelines are adapted from New Zealand Employers' Federation: *A guide for employers on discrimination in employment* (Wellington, 1993); Singapore Centre for Fair Employment: *Fair Employment: Leading fair employment practices handbook* (Singapore); UK Commission for Racial Equality: *Statutory code of practice on racial equality in employment* (London, 2005).

ethnic status. If significant disparities exist, steps need to be taken to encourage the under-represented groups to apply for training.

### Guidelines for training and development:

- Employers should provide employees with access to career training and other individual development opportunities.
- All staff should have the same access to training, regardless of whether they are women or men, or work part-time or full-time, home-based or in enterprises.
- The range and scope of job training provided should give all employees an equitable basis for career development. Adequate attention should be paid to advancing goals defined in company affirmative action measures.
- When opportunities for training arise, employers should inform all eligible employees (as widely as possible) of this opportunity and procedure for application. Employers should assess all interested candidates based on **objective selection criteria**, with adequate attention to company affirmative action measures, to ensure that no one is overlooked.
- **An overall training plan** should be developed based on regular review of training needs in the company. Both individual training needs and group training needs should be taken into account in planning. Workers' organizations and representatives of the groups of directly concerned employees (e.g. women, persons with disabilities) should participate in development of the training plan.
- **Individual development objectives** and individual training plans should be mutually agreed between individual managers and the employee.
- Managers and supervisor responsible for selecting workers for training and other development opportunities should be trained on recognizing workers' training needs and on company's equality policy. The managers and supervisors should actively encourage all workers to apply.
- Training session should be **flexibly organized** so that all eligible employees can attend. E.g. training after working hours or far away from the workplace may not suit employees with family responsibilities.
- Employees should be given opportunity to provide feedback on the training provided.<sup>18</sup>

18 See UK Commission for Racial Equality: *Statutory code of practice on racial equality in employment* (London, 2005); Singapore Tripartite Alliance for Fair Employment Practices (TAFEP): *Tripartite Guidelines on fair employment practices* (Singapore); New Zealand Employers' Federation: *A guide for employers on discrimination in employment* (Wellington, 1993).

## 2.6. Promotion and career development

The career development of individual workers should be solely determined by their personal abilities and motivation, without any interference of discrimination or bias. Promotion decisions should be based on merit. In addition diversity in the composition of the team and any possible affirmative action measures adopted in the company needs to be taken into account. The ILO Committee of Experts on Application of Conventions and Recommendations (CEACR) and the UN Committee on the Elimination of Discrimination against Women (CEDAW) have noted the need to accelerate women's access to promotion and senior level jobs in Indonesia.<sup>19</sup> Women should be given opportunities to not only supervise other women in the workplace, but also male workers.

Employers should make sure that managers involved in making decisions on promotions are trained to not to allow their personal bias or any stereotyped assumptions to intervene in the decision-making process. To ensure that promotions are decided in a non-discriminatory way, it is advisable that the same procedures are used for promotion as for recruitment. This involves advertising the job internally or externally and assessing applicants' eligibility against pre-determined selection criteria.

### Guidelines for non-discriminatory promotion:

- It is good practice to adopt a formal **promotion policy and procedure**. The promotion policy and criteria should be made known to all employees and managers. Where no promotion policy has been defined, the selection for promotion should be done along the same lines as recruitment.
- All promotion opportunities, including development opportunities that could lead to promotion, **should be advertised widely** throughout the organization.
- Leadership qualifications should not focus on characteristics typically portrayed by men or by women only. Employers should allow for varying styles of leadership to be assessed.
- The promotion process should take into account the current job performance, skills, abilities, qualities, aspirations and potential of the employee. Promotion decisions should also take team diversity and company affirmative action measures adequately into account.
- Where posts are advertised internally and externally the same selection procedures and criteria should apply to both internal and external candidates.
- To encourage greater opportunities for women or other groups of workers who are typically marginalized (by reason of their disability or otherwise), employers could set affirmative action measures, such as quotas, to support greater promotion of these groups.

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<sup>19</sup> ILO Committee of Experts on the Application of Conventions and Recommendations: *Direct request concerning Discrimination (Employment and Occupation) Convention, 1958 (No.111) with respect to Indonesia* (Geneva, 2011); Committee on the Elimination of Discrimination against Women: *Concluding comments of the Committee on Elimination of Discrimination against Women: Indonesia* (Geneva, 2012).

- To avoid prejudice or bias, a review panel of more than one person with an equal representation of women and men should assess the applicants' eligibility for promotion. All persons involved in the promotion process should be trained on equality, affirmative action, and hiring on merit.
- Employers should keep a record of promotion appointments. The records should be examined regularly to ensure that appointments are not limited to members of one particular employee group.<sup>20</sup>

## 2.7. Termination of employment

Employers should ensure that employees are not dismissed, refused contract renewal, laid off, or made to retire on discriminatory grounds. Dismissals and retrenchment should be carried out in full compliance with the provisions of the *Manpower Act* and Constitutional Court Rulings and the principle of equal treatment should be respected.

### Dismissal

Dismissal must always be fair and reasonable. The *Manpower Act* prevents termination of employment due to “...*difference of understanding/belief, religion, political orientation, ethnicity, color, race, sex, physical condition or marital status*”.<sup>21</sup> Before any decision to dismiss is made, the employee should be allowed to present his or her case and views on the performance ratings in question.

### Non-renewal of fixed duration contracts

The *Manpower Act* permits use of fixed duration contracts up to two years of employment and an extension of one additional year. Fixed duration contracts convert to permanent contracts if any renewal causes the cumulative total time under the employment contracts to extend beyond the total duration of two years.<sup>22</sup> An employer cannot refuse to renew a fixed duration contract for reasons of discrimination on the grounds of e.g. trade union membership or pregnancy.

### Retrenchment

When employers need to undertake retrenchment measures, e.g. due to changes in business volume, specific attention should be paid to non-discriminatory implementation of the arrangements. All retrenchment policies, procedures and practices need to be fair and non-

20 Guidelines adapted from Hong Kong Equal Opportunities Commission: “Code of practice on the Race Discrimination Ordinance” (Hong Kong, 2009); New Zealand Employers’ Federation: *A guide for employers on discrimination in employment* (Wellington, 1993); Singapore Tripartite Alliance for Fair Employment Practices (TAFEP): *Tripartite guidelines on fair employment practices* (Singapore); UK Commission for Racial Equality: *Statutory Code of practice on racial equality in employment* (London, 2005).

21 *Manpower Act*, article 153(1)(i).

22 *Manpower Act*, article 59(7).

discriminatory. Adequate attention should also be paid to company affirmative action measures. Any practices that could unjustifiably and disparately impact specific groups of employees (e.g. women workers, workers with disabilities) should be removed. If aptitude tests are designed and used to select people for redundancy, they should be objective, and fairly and consistently administered. Voluntary redundancy payouts, if available, should be provided on equal terms to all employees in the same or similar circumstance. When downgrading or short-time working arrangements are applied, these should be implemented in a non-discriminatory way. Employers should always consult the workers' organizations and the representatives of groups of workers directly concerned about the proposed redundancies and the criteria for selection.<sup>23</sup>

The employers should not lay off women more easily than men based on the assumption that women are secondary income earners in their families. The income earned by female workers is sometimes the main income for a family.

## Equal retirement age

The official retirement age in Indonesia for civil servants is 56, or 50 if there has been over 20 years of public service. In the private sector, pensions can begin from the age of 55. Employers should not require women employees to retire earlier than men workers.

## Monitoring dismissals and retrenchment

Employers should maintain records on dismissals and retrenchments. These records should be reviewed regularly to monitor whether any groups of employees have been disproportionately impacted by dismissals and retrenchments. Workers' organizations or other employee representatives should be involved in the review of the dismissal and retrenchment records. The monitoring data can be also reviewed to see if biased policies, procedures or practices in other areas, such as performance assessment, could be contributing to significant disparities between dismissal rates of different groups of employees. 📖 **See Section 8.5** *Monitor the equality policy and action plan.*

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23 See Hong Kong Equal Opportunities Commission: "Code of practice on the Race Discrimination Ordinance" (Hongkong, 2009); Singapore Tripartite Alliance for Fair Employment Practices (TAFEP): *Tripartite Guidelines guidelines on fair employment practices* (Singapore); UK Commission for Racial Equality: *Statutory code of practice on racial equality in employment* (London, 2005).





## 3. CREATING A PRODUCE WORKING ENVIRONMENT

In addition to ensuring that employees feel they are valued and treated fairly, improved staff well-being requires also that the working environment in the company is friendly and supportive. An inclusive working environment refers to work place where:

- All employees are treated with dignity and no harassment (including sexual harassment) is tolerated.
- Employees' special needs are taken into account and they are provided special support in accordance with their life situations or personal needs.

A fair and inclusive workplace recognizes that differences between groups of workers and their needs exist. In innovative companies these differences are valued and respected, and seen as a source of new ideas and creativity that contribute to an organization's competitive advantage. Taking employees' personal needs into account is also necessary to ensure that skilled, experienced and motivated employees do not need to leave the company due to childbearing, family responsibilities, health problems, or other personal needs requiring accommodation in work arrangements, but they can continue to give their contribution to the company.

To ensure adequate attention to employees' special needs, employers should follow the guidelines set out in this guide and the **Code of practice for employers on promoting equality and preventing discrimination at work in Indonesia** issued by APINDO in cooperation with the ILO.

### 3.1. Harassment

Employers should ensure that all employees in the organization can enjoy a safe and respectful working environment free from harassment. All staff should be made aware of what kind of behavior is acceptable and unacceptable in the workplace.

Harassment consists of unwelcome conduct or comments that violate the other person's dignity and/or create an intimidating, hostile, degrading or offensive work environment. Harassment is discriminatory if it is based on **sex, ethnicity, disability, health status, place of origin** or any other prohibited ground of discrimination covered in Indonesian law or Convention No.111. Actions constituting harassment may include:

- ◆ Offensive jokes, personal insults, persistent criticism, derogatory language.
- ◆ Unwanted physical contact.
- ◆ Threatening behavior and gestures.
- ◆ 'Freezing' someone out.

At the workplace, harassment can emanate from an employer, a supervisor, a colleague, a visitor, a customer, and anybody with whom the worker is interacting.

Research conducted in Indonesia indicates that harassing behavior and use of harassing language by supervisors may be found in some Indonesian industries, for example in the garment industry. Due to the fact that many line supervisors are men while most workers are women, this behavior may also have characteristics of sexual harassment.<sup>24</sup>

## Sexual harassment

Sexual harassment is a serious form of sex discrimination that mostly but not only women face when applying for jobs and during their employment at the workplace. Sexual harassment is prohibited in under the Manpower Act as it is a form of sex-based discrimination. The Ministry of Manpower and Transmigration issued Guidelines on Sexual Harassment Prevention at the Workplace in 2011 through Ministerial Circular Letter No. SE.03/MEN/IV/2011. These guidelines and Apindo's *Guidance for Employers: Sexual Harassment Prevention at the Workplace (2012)* provide practical guidance for employers on how to prevent and address sexual harassment at work.

Sexual harassment refers to conduct of sexual nature or other conduct based on sex, affecting the dignity of women and men, which is unwelcome, unreasonable and offensive to the recipient. Sexual harassment may take two forms:

- ◆ **“Sexual blackmail”** (*quid pro quo*): conduct which makes a job benefit – such as a pay rise, a promotion, or even continued employment – conditional on sexual favors.
- ◆ **“Hostile working environment”**: conduct that creates an intimidating, hostile or humiliating working environment for the recipient.

Actions constituting sexual harassment may be:

- ◆ ‘Physical – e.g. sexual violence or unwelcome physical contact, such as hugging, kissing or touching.
- ◆ ‘Verbal – e.g. comments and intrusive questions of a sexual nature about one’s private life.
- ◆ ‘Non-verbal – e.g. staring, leering, whistling, sexually suggestive gestures, posters, text messages, pictures.

In addition, creation of sexually hostile or intimidating environment, for example through display of sexually explicit pictures or posters constitutes sexual harassment. Some acts of sexual harassment may amount to criminal offences under the *Penal Code*, for example, sexual assault and rape.

Most victims are young women but they can also be men or older women. Sexual harassment can also occur between people of the same sex. Perpetrators in workplaces are usually bosses, but sexual harassment can also emanate from colleagues or customers.

24 ILO and IFC, “Better Work Indonesia: Garment Industry 1st Compliance Synthesis Report” (Geneva, Oktober 2012), hlm. 8.

## Impact of harassment

Harassment and bullying at work cause fear, stress, anxiety and physical sickness amongst employees. It can lead to increased absenteeism, an apparent lack of commitment, poor performance and even resignation. Preventing harassment at work is essential for workers well-being and good workplace relations, which are both essential to boosting company productivity. It is both in the employees' and the employer's interest to ensure that harassment does not occur in the workplace.

## Guidelines for handling and preventing harassment at workplace

- ◆ 'Ensure that your company has a clear senior management commitment to prevent harassment at the workplace.
- ◆ 'Ensure that your company has a copy of the *MoMT Guidelines on Sexual Harassment Prevention at the Workplace and Apindo's Guidance for Employers: Sexual Harassment Prevention at the Workplace*. It is important that all senior management understand these guidelines. These can be downloaded from the internet from the following site [http://betterwork.com/indolabourguide/?page\\_id=319](http://betterwork.com/indolabourguide/?page_id=319)
- ◆ 'Adopt a policy on handling and preventing harassment in the workplace. The harassment policy can be adopted either separately, or as part of the company equality policy. 📖 **See Section 8.1. Commit to equality, adopt an equality policy.**
- ◆ 'Set up an internal grievance system to handle harassment related complaints. Ensure that harassment complaints are handled effectively, fairly and confidentially. Punish perpetrators adequately. 📖 **See Section 9. Dealing with discrimination related complaints.**
- ◆ 'Ensure that all managers, supervisors and staff know that harassment is not accepted in the workplace.
- ◆ 'Foster and promote respectful company culture to build a workplace free from harassment.<sup>25</sup>

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25 ILO: "General observation on Convention No. 111", in *Report of the Committee of Experts (RCE)*, International Labour Conference, 91<sup>st</sup> Session (Geneva, 2003); ILO: *Equality and non-discrimination at work in China: Training manual* (Beijing, 2010); N. Haspels et al: *Action against sexual harassment at work in Asia and the Pacific* (Bangkok, 2001). See also ACAS: *Delivering equality and diversity* (London, 2009); Hong Kong Equal Opportunities Commission: "Sexual harassment in the workplace", in *Good management practice series* (Hong Kong).

## 3.2. Maternity protection

Employers should ensure full compliance with the *Constitution* and the *Manpower Act* on provision of **maternity protection** for all women workers and provision of **paternity protection** for all male workers. Provision of adequate maternity protection is important to ensure the health of mother and child, and to ensure that the female employees are able to carry on working for the organization during pregnancy and after childbirth. Taking care of women workers' well-being during maternity can bring benefits also to employers. Well-supported working mothers are more likely to return to work after maternity leave. This enables employers to retain trained, experienced and motivated workers with strong loyalty to the employer.

The international standards on maternity protection are set in the ILO *Maternity Protection Convention*, 2000 (No. 183). Maternity protection consists of five elements: **maternity leave, cash and medical benefits, health protection, employment protection and non-discrimination**, and **breastfeeding**.

### Maternity leave

All pregnant women employees are entitled to maternity leave for the minimum period of 3 months, 1.5 months prior to childbirth and 1.5 months following childbirth, as stipulated in Article 82 of the *Manpower Act*. This period can be extended if required and requested by a written statement from a midwife or obstetrician prior to or after birth. Employers shall provide all pregnant women with maternity leave, including women on specified time contracts, regardless how long they have worked in the company. Pregnant workers should notify their employer about their expected due date as early as possible so that the employer can ensure no disruption to business due to maternity leave.

Women who suffer a miscarriage are also entitled to 1.5 months paid leave under article 82 of the *Manpower Act*.

After the maternity leave, women workers shall have the right to return to the same job or one with same pay. Women shall retain their seniority and all related benefits. Many Indonesian companies allow women to delay coming back to work after the three months maternity leave for one or two months with paid or unpaid leave.

### Cash and medical benefits

Women are entitled to 3 months of paid maternity leave. This means they are entitled to their full wage during this period of leave under article 84 of the *Manpower Act*. This applies to all workers, whether they are permanent employees, outsourced workers, specified time workers or homeworkers, without discrimination.


Under article 2 of Ministerial Decree No. 100/MEN/VI/2004 on the Stipulation on Implementation of Work Agreement for Specified Period of Time, women workers on specified time contracts (PKWT) are entitled to the same working conditions, including maternity protection, as permanent employees.

## Health protection

Pregnant or breastfeeding women should never be obliged to perform work prejudicial to the health of mother or child. If the working environment of a pregnant or breastfeeding woman involves risks, such as physical strain or exposure to hazardous agents, the health of the woman should be protected by eliminating risks, adaptation of working conditions and/or, if adaptation is not possible, temporary transfer to another post or paid leave. Under Article 76(2) employers are prohibited from employing women at night if there is a medical risk to her unborn baby. Pregnant women should also be entitled time off for medical check-ups.

## Employment protection and non-discrimination

Maternity should not be a source of discrimination or disadvantage in employment. Employers should not make any employment decisions on the basis of a woman's pregnancy or maternity leave, which negatively affect a pregnant woman's employment status, including decisions concerning dismissal, loss of seniority, or deduction of wages. These practices are unlawful under the *Manpower Act*, which prohibits laying off women due to pregnancy or maternity leave (Article 153). Dismissal of women workers on grounds related to pregnancy is also prohibited in the ILO *Maternity Protection Convention*, 2000 (No.183) and the *Termination of Employment Convention*, 1982 (No.158). Maternity leave should be counted as work for purposes of calculating seniority.

Employers should not include any contents in the labour contract restricting female workers' right to get married or to bear a child. Use of pregnancy tests as a condition for hiring or continued employment is prohibited.  **See also Sub-section Use of pregnancy tests in Section 4.6 Pre-employment medical examinations.**

## Breastfeeding

New mothers should be provided breastfeeding breaks and facilities to support exclusive breastfeeding upon return to work. Article 83 of the *Manpower Act* stipulates:

*“Entrepreneurs are under an obligation to provide proper opportunities to female workers/ labourers whose babies still need breastfeeding to breast-feed their babies if that must be performed during working hours.”*

## Government Regulation No. 33 on Granting Exclusive Breastfeeding (2012)

Article 35 of Government Regulation no. 33 on Granting Exclusive Breastfeeding (2012) obliges the workplace manager and the administrator of public facilities to introduce internal regulations that support and aid successful breastfeeding programmes. Such internal regulations demonstrate enterprise support of breastfeeding and allow the enterprise to implement an effective BFW policy through the following means:

- ◆ Establish decent workplace facilities for working mothers to breastfeed/breast-pump (nursing room).
- ◆ Give working mothers the opportunity to breastfeed/express breast milk during working hours.
- ◆ Ensure that the policy on 3 month maternity leave is more flexible.

It will not always be necessary to have a 1.5 (one-and-a-half) month's period of rest before giving birth and a 1.5 (one-and-a-half) month's period of rest after giving birth, but it is advisable that the maternity leave is adjusted closer to the date of birth, based on a reference letter from the doctor. This will allow a mother to have more time to breastfeed after the birth and to prepare for her return to work.

For more practical guidance on establishing a breastfeeding-friendly workplace, see ILO, *Breastfeeding Friendly Workplaces – Guidelines for Employers* (Jakarta, 2012), which was created by the ILO Better Work Project in collaboration with the Indonesian Breastfeeding Mothers' Association (AIMI) to guide employers' practices and assist in fulfillment of Government Regulation No.33 of 2012 on exclusive breastfeeding in Indonesia.



### Case example 6.

#### Good practices on maternity protection from PT. Dewhirst Company

PT. Dewhirst invites Indonesian Breastfeeding Mothers' Association (AIMI) to their factory every 2 months to disseminate information on breastfeeding. The first programme was held on July 29th 2010, followed by an additional 13 activities until November 2012, each session lasting 90 minutes (2:30pm-4:00pm).

Prior to AIMI's first visit, PT. Dewhirst already had a breastfeeding at the workplace policy. For example, PT. Dewhirst allowed their workers to plan their own maternity leave (as opposed to adhering to the strict 1.5 months of rest before and 1.5 months of rest after birth). The supervisor/manager also initiated a supportive vitamin intake programme for PT. Dewhirst's pregnant workers. In coordination with AIMI, PT. Dewhirst organised a one day seminar on the subject "Early Latch-On" for the midwives working under PT. Dewhirst and partners.

The factory provides 2 nursing rooms on factory premises. Each of the rooms can be locked and contains chairs, power and a refrigerator.

Source: ILO, "Breastfeeding Friendly Workplaces – Guidelines for Employers" (Jakarta, 2012).

### 3.3. Work-family balance

In Indonesia the population and family structures are changing. This leads to increased family responsibilities for the working age population, and more obvious conflicts between work and family. Employers should consider designing more flexible work options to retain or attract women and men employees with family responsibilities who might otherwise have to exit from the workforce.

Many companies use family friendly workplace practices as an integral strategy to enhance their staff's well-being, productivity and commitment to the company. Implementation of family friendly practices is beneficial not only to employees but also to the company. Family friendly workplace practices can contribute to attracting and retaining talent, enhancing staff morale and productivity, lowering levels of sick leave and absenteeism, reducing staff turnover, and incurring lower recruitment and training costs.

Family friendly practices are important for employees with young children, sick or old family in need for care, or employees who for other reasons seek a more balance between work and life. Family friendly workplace schemes may include the following types of measures:

- ◆ Flexible work arrangements, such as part-time work, job sharing, compressed work week and teleworking.
- ◆ Family care leave, such as marriage leave, paternity leave, eldercare leave, bereavement leave and adoption leave.
- ◆ Study leave and career breaks and sabbaticals.
- ◆ Childcare facilities or childcare support, such as a day care centre at the workplace.

#### **Guidelines for designing and implementing family friendly workplace schemes:**

- ◆ Tailor the family friendly workplace practices to the needs of the employees and the company.
- ◆ Involve workers' organizations and representatives of directly concerned groups of employees in design and review of the family friendly schemes.
- ◆ Ensure that employees are aware of family friendly workplace schemes available in the company, and that they all have access to these schemes.
- ◆ Adjust the performance management system so that it allows objective assessment of the performance of employees on flexible work arrangements
- ◆ Ensure that all managers are trained on the family friendly schemes, support them and nurture a family friendly workplace culture. Managers should help their staff in tailoring flexible work arrangements that meet their individual needs.<sup>26</sup>

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26 See Singapore Centre for Fair Employment: *Fair employment: Leading fair employment practices handbook* (Singapore, 2009); ACAS: *Delivering equality and diversity* (London, 2009); Hong Kong Equal Opportunities Commission: *Code of practice on the family Status Discrimination Ordinance* (Hong Kong).



### 3.4. Reasonable accommodation

Reasonable accommodation refers to **practical modification or adjustment** to work arrangements, employment practices, working time, or the working environment that enables a qualified applicant or employee with special needs to perform the job. In Indonesia, providing reasonable accommodation for **persons with disabilities** is employers' legal obligation under Article 19 and 37 of the *Manpower Act*. For every 100 employees, it is necessary for employers to hire at least one person with a mental or physical disability.<sup>27</sup> Therefore all employers should take into consideration how they can make small adjustments to their workplace to include persons with disabilities. See ILO, *Employing Persons with Disabilities, Guideline for Company* (Jakarta, 2012) for more information on how to accommodate persons with disabilities in your workplace.

It is also necessary to provide reasonable accommodation also to workers with special needs related to their **health condition, religion, family responsibilities** or other reasons to ensure employers fulfill their legal responsibilities to provide for non-discrimination in employment.

Some examples of reasonable accommodation measures include:

- ◆ Modify office space so that an employee using a wheelchair can access it.
- ◆ Provide an employee with vision impairment with glasses that enables him or her to perform the job.
- ◆ Allow ethnic minority employees to take holidays during their traditional festivals.
- ◆ Let an employee with a kidney problem take a time off to go to the hospital for dialysis.
- ◆ Modify work hours to allow for Muslims to take breaks for prayers.
- ◆ Allow Muslim women to wear a headscarf to work .

Reasonable accommodation may be made at any stage of employment, including the recruitment stage. In the recruitment stage it can mean for example organizing the tests and interviews in a wheelchair accessible place and at times that allow all applicants, including those with family responsibilities, to attend.

Employers should not reject a qualified and suitable job applicant due to his or her special needs, if the person can perform the job with help of reasonable accommodation measures. However, when accommodation causes **undue hardship** (for example, high costs, or extensive workplace adjustments) for the employers' business operations, the employer is not required to make the accommodation. What is reasonable and what constitutes undue hardship should be determined on a case-by-case basis.<sup>28</sup>

27 See Government Regulation No. 43/1998 (on Efforts to Improve the Social Welfare of Persons with Disabilities)

28 See ILO *Recommendation Concerning HIV and AIDS at the World of Work*, 2010 (No. 200), Art 1(g); ACAS: *Delivering equality and diversity* (London, 2009); Hong Kong Equal Opportunities Commission: "Absence of disability as a genuine occupational qualification", in *Good management practice series* (Hong Kong); Hong Kong Equal Opportunities Commission: *Code of practice on the Race Discrimination Ordinance* (Hong Kong); Singapore Centre for Fair Employment: *Fair employment: Leading fair employment practices handbook* (Singapore, 2009).

## 4. EQUALITY IN COMPANY BUSINESS PRACTICES

In addition to their human resource management practices, companies should promote equality and non-discrimination in all their **business practices**, and in the company's whole scope of control and influence. The principles of equality and non-discrimination embedded in the law and international legal instruments cover not only employment but also other fields of political, economic, social and cultural life.<sup>29</sup> This means that companies should respect the principles of equality and non-discrimination also in their business practices, including customer service, marketing, sourcing etc.

In many countries discrimination in **provision of goods, services and facilities** is specifically prohibited in the law. For example, in Hong Kong the discrimination legislation covers not only employment and education, but provision of goods, services and facilities, participation in clubs, and in the case of the Disability Discrimination Ordinance also access to premises.<sup>30</sup> While in Indonesia there is not yet legislation that explicitly prohibits this, it is a good business practice to ensure non-discrimination in provision of goods, services and facilities.

Companies should also ensure that no customers are harassed or treated in a discriminatory manner, e.g. refused a service on the basis of their ethnicity, disability or any other personal characteristics. Ensuring that company marketing materials communicate positive images about diversity and equality is a good practice that can improve company brand image and help accessing new market segments.

Most often companies undertake to promote equality and non-discrimination in business practices as part of their broader programmes on **corporate social responsibility (CSR)**. When committing to CSR the companies affirm their values and principles both in their internal policies and processes, and in their interaction with other actors, including their **suppliers, subcontractors, buyers, dealers, and other business partners and stakeholders**. Discriminatory bias should not impact any business decisions in the company, such as selection of subcontractors or suppliers.

Companies with strong commitment to equality include equality and non-discrimination in their **supply chain management policies**, and require their suppliers and subcontractors to adhere to these principles. This includes for intermediaries employing homeworkers. Including non-discrimination clauses in **sourcing and procurement policies** and making eligibility for contracts dependant on observance of the equality principle is a good practice for both public bodies and private enterprises, extending the impact of company equality policy down along its

29 See for example discrimination prohibitions in the UN Convention on the Elimination of All Forms of Racial Discrimination (1965) and the Convention on the Elimination of Discrimination against Women (1979).

30 Hong Kong Equal Opportunities Commission website <http://www.eoc.org.hk> [8 Sep2010].

supply chain. It is a good practice to set compliance with the **Code of practice for employers on promoting equality and preventing discrimination at work in Indonesia** issued by APINDO in cooperation with the ILO as a condition of business with suppliers, subcontractors and other business partners.<sup>31</sup>



## Case example 7

### Dharmawangsa Hotel Jakarta

The Dharmawangsa Hotel is a luxury 5-star hotel located in South Jakarta. It opened in 1997 and employs 350 persons for a total of 100 rooms.

Currently two persons with disabilities are working in the hotel. One of them is hearing impaired and works as a chef assistant in the kitchen of the hotel restaurant. He graduated from a tourism school and has been hired on the basis of his skills and abilities. Means of communication are lip reading and written communication. The Human Resources Manager of the hotel has also been practicing sign language in order to communicate with deaf and hearing impaired employees.

The other person with a disability is working as a timekeeper security officer for the hotel. Due to a motorbike accident he became physically impaired and first wanted to resign from his job. He thought that being impaired meant he couldn't continue working for the hotel anymore. However, because of his length of service and his abilities, the hotel management found no reason to accept his resignation and invited him to remain within the hotel security team.

Giving a chance to injured workers to keep their job even if their accident has life changing consequences is important. Efforts to keep staff members when something happens to them during or after working hours strengthens employer-worker relations and increases workers commitment to their jobs as they can see their company cares for them.

Source: adapted from ILO, "Employing Persons with Disabilities, Guideline for Company" (Jakarta, 2012)

31 ILO: *Equality at work: Tackling the challenges* (Geneva, 2007); ILO: *Time for equality at work* (Geneva, 2003).