

Employers' guide
on promoting equal opportunity and treatment
and preventing discrimination at work
in China

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China Enterprise Confederation (CEC)
International Labour Office (ILO), Beijing and Bangkok

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Employers' Guide on Promoting Equal Opportunity and Treatment and Preventing Discrimination at Work

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Introduction

Equality and non-discrimination in employment and occupation is a fundamental right at work. All workers have the right to equal opportunity and treatment, and all employers have a corresponding obligation to ensure that their company is free from discrimination and harassment. Apart from a legal obligation promoting equality and non-discrimination is a strategy that can bring clear business benefits, such as improved productivity and innovation in the company. Promoting equality and non-discrimination makes good business sense, and is an important component in being a socially responsible employer. Many companies address discrimination and promote equality as part of their broader programme on corporate social responsibility (CSR).

This Employers' guide on promoting equal opportunity and treatment and preventing discrimination at work is issued by the China Enterprise Confederation (CEC) in cooperation with the International Labour Office (ILO) to give CEC member companies practical guidance on how to take measures to promote equal opportunity and treatment and eliminate discrimination in their company policies and practices. It addresses practical questions that general managers, human resource managers, supervisors, workers' representatives and all company staff need to consider in their daily work, including decisions related to recruitment, staff training, promotion, retrenchments, and business practices such as sourcing and marketing. The guide gives practical guidance in these areas with a view to helping companies realize the business benefits related to equality.

This Guide is issued together with a Code of practice for employers on promoting equal opportunity and treatment and preventing discrimination at work articulating a set of guiding principles for employers and business on non-discrimination and equality at work. This guide supplements the Code of Practice, giving detailed practical guidance on the broad principles outlined in the Code of Practice. The employers are encouraged to use these two tools together to integrate equality and non-discrimination in their human resource and business practices, and to raise awareness about equality in their company and among their stakeholders.

This Guide has three parts. Part I establishes a business case for equality. It explains why employers should know about equality and what they can do to promote it. Part II gives practical guidance on what equality and non-discrimination mean, and how to ensure that company recruitment and employment practices are free from discrimination. The practical guidelines cover the whole employment cycle starting from writing non-discriminatory job description and job advertisements to fair payment practices and procedures for carrying out retrenchments in a non-discriminatory manner. Part II outlines also how to make the company a supportive, productive and inclusive workplace that takes all employees' needs into account, and how to incorporate equality in company business practices. Part III gives practical guidance on how to manage equality in the workplace. It outlines the basic steps of planning and implementing equality measures. Part III introduces also the most common tools for managing equality – including equality policies, equality action plans and affirmative action measures.

PART I –BUSINESS CASE FOR EQUALITY

1. Why should employers know about equality?

Chinese legislation gives all workers right to equal employment, and prohibits any discrimination at work on the grounds of sex, ethnicity, religion, disability, health status, social origin including rural migrant status, or employment status. To ensure equality in the labour market, all employing units have a legal obligation not to discriminate. Apart from ensuring that the recruitment and employment practices in their company are free from discrimination, the employers should also take active steps to promote equality.

Apart from fulfilling the legal obligations, taking equality seriously in company human resource practices can deliver benefits to businesses. Promoting equality is not just an obligation, but it makes good business sense. Compelling evidence from survey research conducted in companies shows that equality measures can benefit companies in the



following ways:

1. Improved ability to attract talent and skilled workforce
2. Increased staff retention, workforce satisfaction and lowered employee turnover
3. Increased productivity
4. Improved innovation and creativity
5. Access to new market segments and improved customer satisfaction
6. Brand development and better reputation
7. Lowered risks of workplace conflict
8. Lowered risk of litigation .

These benefits to business can be achieved through adopting equal treatment of employees as a core value of the company, and ensuring that this principle is adhered to in all company policies and practices.

1.1 How equality promotion can help Chinese companies in doing good business?

The current Chinese business environment is characterized by fight for talent, search for new innovation and fierce competition in both domestic and overseas consumer markets. Establishment of a structured and transparent human resource management system based on the principles of equality and non-discrimination can help companies in responding to these challenges. The best assets of the company are its people. Therefore ability to attract the best possible people to the company and to retain them is the key for productivity, innovation and success.

1. Attract talent, access a wider talent pool

In China, shortage of workers with adequate technical skills is one of the main challenges faced by companies. A study conducted by CEC and ILO in 2007 found out that almost 70 per cent of the enterprises faced difficulties in recruiting suitable candidates. Being known as an “equal opportunities employer” – an employer that rewards and promotes its staff based on merit and contribution – can help companies in attracting skilled applicants that are motivated to work hard and to develop their skills to the full. Provision of development opportunities and special schemes, such as opportunities for flexible working, is also an important factor in attracting talent to the company. The survey by CEC and ILO confirmed that company reputation and competitive salaries are the two most critical factors for successful recruitment of top talent. See Case example 1: The fight for talent in China

Commitment to non-discrimination gives companies an access to a wider talent pool to recruit from. For example, rejecting a qualified and suitable candidate just because of his or her sex, ethnicity, or because he or she is a carrier of non-symptomatic Hepatitis B virus would be waste of talent. Tapping to these sometime disregarded talent pools can give equal employers a competitive advantage over their competitors. Assessing all job applicants based on their merit, skills, experience, abilities and potential only – without interference of discriminatory bias – helps employers in finding the best person for the job.

2. Retain talent, lower employee turnover

In China, one of the main reasons for employees to “jump jobs” is to look for better opportunities in other companies. The most common reason for both assembly line workers and high-skilled professionals to change jobs is to “develop themselves” and to get to better positions. To prevent the trained and skilled staff from leaving, employers should ensure that there are development opportunities available inside the company, and that these opportunities are open to all. Selection for training or promotion shall be done based on fair and objective selection criteria, with adequate attention paid to team diversity and company affirmative action measures. Improved ability to retain employees can lead to significant savings in company recruitment and training costs.

Company surveys conducted abroad have established a clear link between implementation of equality measures and lowered employee turnover. For example, a survey of 130 companies in Ireland found that implementation of strategic human resource management systems lowered employee turnover by 7.7%. 4.4% of this reduction was due to implementation of equality measures alone. Case studies on Chinese company practices confirm that also in China establishment of structured human resource management systems based on the principle of equality can lead to significant reduction in labour turnover and increase in employee satisfaction.

See Case examples 2. Compelling business case for workplace partnership, diversity and equality (Ireland) and 3. Human Resource Management in Chaoda Warp Knitting Co. Ltd (China).

3. Boost productivity

Many companies in China, especially SMEs, face challenges in attempting to improve their labour productivity and to remain competitive. Implementation of equality measures can help in this task by improving employee motivation, commitment and morale. The study conducted in Ireland found that implementation of equality strategies improved labour productivity by 6.5% in the surveyed 130 companies. All in all implementation of strategic human resource management measures improved labour productivity by 14.8%.

4. Nurture innovation

Companies in China are putting increasing efforts in development of new products and

establishment of their own brands. Success in these efforts is linked to innovation and creativity in the company. Experiences from organizations show that having a diverse workforce can help businesses in increasing innovation and creativity within the organization, resulting in new ideas and new products. Similar people tend to naturally view things in a similar way, whereas diversity can lead to new solutions and new perspectives. The above mentioned Irish study linked implementation of equality strategies to a 7.9% increase in workplace innovation. Also in China, hiring women and men with different backgrounds (place of origin, ethnic group, religion) can help companies in increasing innovation and creativity.

5. Access new markets, improve customer satisfaction

Domestic consumption in China is increasing, and at the same time the competition for new customer base between companies is hard. Overseas experience shows that having a diverse workforce helps companies in tailoring their products and services to specific needs of different market segments. Diversity helps also in strategic marketing and may improve customer satisfaction. For example, it is known that ethnic minority customers are more willing to buy products from stores that employ ethnic minority staff and treat them with dignity.

6. Improve reputation and brand image

Good public image and company reputation attracts talent and new customers. Improved public relations are important to both larger companies seeking to expand their brand and company image as well as to the smallest companies trying to attract more customer base in their local community. Gaining reputation as an “equal opportunities employer” is also crucial to securing orders from socially responsible big international buyers who need to make sure their supply chains are free from discrimination.

7. Improve workplace harmony, reduce conflict

Employees who feel that they are valued and treated fairly in the workplace are more satisfied with their jobs. If the company management is viewed as treating employees unfairly (e.g. making unjust decisions on bonuses or pay rises), loss of employees’ confidence in the management may lead to conflicts in the workplace. To maintain workplace harmony and to foster good workplace relations, employers should ensure that no discrimination takes place and human resource management is based on fair and objective criteria, with adequate implementation of affirmative action measures. Good two-way communication between the management and the employees and workers’ organizations is also essential in building good workplace relations. Employees should have a chance to participate in the formulation of company policies, including the equality policy, and in reviewing the policies and practices regularly.

8. Reduce risks of litigation

The Employment Promotion Law that came into force on 1 January 2008 gave job applicants

and employees who feel they have been discriminated against the right to lodge a lawsuit directly in People's Courts (Article 62). The number of discrimination cases in People's Courts all over the country is growing fast, and in many cases the employers have been ordered to pay heavy compensation to the claimant. At the same time, the government is taking further steps to strengthen the enforcement of the discrimination legislation through administrative supervision. Employers should ensure that their recruitment and human resource management systems comply fully with the requirements of the law in order to avoid financial sanctions and damage to their reputation.

See Case examples 7: Compensation for HBV discrimination in recruitment (China), 8. Job seeker successfully sues hospital for violation of right to privacy (China) and 10. Sexual harassment leads to a penalty of 5 months detention (China).

1.2 Benefits of equality for SMEs

Taking action on equality is often viewed as something that larger companies do, but that small and middle sized enterprises (SMEs) do not need to worry about. In fact, equality is as relevant to SMEs as it is for large corporations.

SMEs are faced with similar (or even harder) challenges in attracting and retaining talent as large corporations. Having good public image as an “equal opportunities employer” can help SMEs in finding the right people to help them expand and grow. As explained above, equality measures can help also SMEs in boosting innovation, improving customer satisfaction, reducing conflict and improving workplace relations. Experiences from over 1200 SMEs in 27 European countries show that the majority of SMEs recognize the benefits of increased diversity to their business.



Regardless to their commitment to equality, many SMEs face challenges in establishing formal human resource strategies to promote equality due to their limited capacity and resources. Most often SMEs take a staged approach. For example, implementation of equality measures starts with adopting fair recruitment policies and practices and a next step involves equality training for managers and staff involved in the recruitment process to learn how to hire on merit.

1.3 Why is discrimination bad for companies?

Discrimination and equality are two sides of the same coin. Discrimination means absence of equality, i.e. policies or practices that nullify or impair equality of opportunity and treatment. While equality can bring many benefits to the company, discrimination can have serious negative impacts.

Management tips 1:

Think about your business...

To understand the importance and relevance of fair employment practices and seeing how it fits your business needs, think about these questions:

- Is your business faced with a problem of getting the right people to fill job vacancies?
- Is there high employee turnover?
- Are you expanding into new market segments, either locally or regionally?
- Do you feel that there is a shortage of new and creative ideas within the organization?
- Are your customers being treated well? Can this be improved?
- Are people valued in your organization and do you want to raise employee engagement and morale?

To find possible solutions to these problems, think about these questions:

- Are there additional recruitment sources, for example, women, mature workers or people with disabilities that your organization can tap on?
- What changes can be made to current policies in order to attract, retain and motivate these workers?
- What is the current composition of your workforce (in terms of gender, sex, etc.)? Would you have competitive advantage if you had a more diversified and balanced workforce?
- Does the organization need new ideas in production or marketing? If your customers are of different or diverse background, will it help if you get a more balanced workforce in terms of age, race, gender, language, family status etc.?

Sources: Singapore Tripartite Centre for Fair Employment: Fair employment: Leading fair employment practices handbook.

Case example 1:

The fight for talent in China

In 2007, the ILO and the Chinese Enterprise Confederation conducted a survey covering 100 leading enterprises operating in China's five most dynamic industries – the chemical, transportation, electrical, electronic and steel industries. The purpose was to learn about the workplace practices applied in the leading enterprises operating in these industries.

Three areas of concern dominate the survey findings for China:

1. China faces an acute lack of workers with appropriate technical skills. Almost 70 per cent of the enterprises studied indicated that they face difficulties in recruiting suitable candidates, with the greatest difficulty faced in the electrical and electronics industries and in the country's dynamic eastern region.
2. Nearly 93 per cent of the sample enterprises provide job skills training to employees. Enterprises in the sample

spend an average of 3 per cent of their annual revenue on training activities. The main focus of current training activities is on new technology, improving the quality of management and supervision, quality control, and improving client service.

3. The average share of staff leaving the companies every year voluntarily is rather high at 24 percent of total company staff.

The data indicate that China's leading enterprises are in competing hard for relatively scarce high-quality labour. Due to a lack of workers with technical skills, many companies provide training themselves. However, trained workers appear to be attracted to competitors who may offer more attractive salaries and effectively are able to benefit from other companies' training activities.

Collectively, this leads to high staff turnover – a classic HRD problem. According to the enterprises surveyed, the two most critical factors for successful recruitment of top talent are the reputation of the enterprise and the competitive salaries.

Source: ILO Regional Office for Asia and the Pacific in cooperation with the Chinese Enterprise Confederation. As summarized in ILO: Module Four: Organize your people (draft), Sustaining Competitive and Responsible Enterprises project (SCORE), (Geneva, 2010, forthcoming).

Case example 2:

Compelling business case for workplace partnership, diversity and equality (Ireland)

A study of Ireland's top companies has confirmed a strong link between bottom-line business performance and the use of High Performance Work Systems (HPWS) in the workplace. HPWSs include strategic human resource management (staffing, training and development, performance management and remuneration, and communication and participation practices), partnership, diversity and equality strategies, and flexible working arrangements. The findings offer fresh insights into how the effective management of people in companies can drive competitiveness in tangible ways such as improved productivity, innovation and employee retention.

The report is based on a detailed survey of more than 130 of Ireland's leading companies. The research team conducting the survey was charged with measuring the per-capita labour productivity of the companies in question, as well as their workforce innovation and employee retention rates, and of quantifying the proportion of these that could be attributed to the use of HPWS.

Their main findings were as follows:

- Labour productivity: The use of HPWS accounted, on average, for 14.8% increase in labour productivity among the survey sample. In terms of total economic value, annual productivity-per-employee was found to be EUR 299,992, of which EUR 44,399 per employee per annum was directly attributable to the use of HPWS. For the median-sized company in the survey (270 employees), this equates to an additional EUR 12 million in annual sales revenue.
- Workforce innovation: The use of HPWS accounted, on average, for 12.2% increase in workforce innovation, equivalent to sales revenue of EUR 2,061 per employee per annum, or EUR 556,200 in the median-sized company.
- Employee turnover: The use of HPWS resulted in 7.7% decrease in annual employee turnover.

The report includes a specific examination of the diversity and equality theme. It found that in the samples of companies studied, diversity and equality strategies are associated with

- 6.5% increase in labour productivity across this sample;
- 7.9% increase in workplace innovation; and
- 4.4% decrease in employee turnover.

Niall Crowley, Chief Executive Officer of the Equality Authority, commented: "This report establishes workplace

equality and diversity strategies as a key component of High Performance Work Systems. This must ensure that the promotion of workplace equality and diversity now emerge as a priority focus in the implementation of the Government's National Workplace Strategy. This report quantifies, for the first time in an Irish context, a compelling business case for companies to invest in equality and diversity strategies, and to integrate these strategies into their corporate strategy and culture. Equality and diversity strategies are now clearly associated with higher labour productivity, increased workplace innovation and lower employee turnover. A competitive Irish economy needs businesses committed to equality and diversity."

Minister for Labour Affairs, Mr. Billy Kelleher, added that the report's findings will inform the debate around the National Workplace Strategy: "The National Workplace Strategy focuses on stimulating workplace change and innovation, and recognizes the critical role that social partnership can play in this process. The new Report on High Performance Work Systems highlights the benefits of developing general and HR management capabilities for Irish business and employers, and demonstrates the practical rewards that companies can gain by becoming more open to partnership, innovation and change as we move forward. I believe that this Report, in reinforcing and building on the existing evidence, is essential reading for all Irish companies and all of us who are committed to maintaining and improving productivity and competitiveness.

Source: National Centre for Partnership & Performance (NCP) and the Equality Authority: New models of high performance work systems: The business case for strategic HRM, partnership and diversity and equality systems (Dublin, 2008).

Case example 3:

Female leadership and company profitability

Various studies conducted abroad show that there is a positive and significant correlation between company performance, profitability and gender diversity in company senior management. The studies show that both SMEs and larger companies can gain a competitive advantage over their peers by identifying and eliminating obstacles to women's advancement to top management.

A study conducted by the Finnish Business and Policy Forum (EVA) analyzed statistical data from 12,738 limited companies in Finland. The data sample of this study is one of the most representative and extensive company-level data used in gender research, covering 91 percent of Finnish limited companies with more than 10 employees. The study found out that when all other factors affecting firm profitability (such as size, sector etc.) were controlled, a company with a female CEO was about 10 percent (slightly more than one percentage point) more profitable than an otherwise similar company with a male CEO. Similarly, a company with a gender balanced board is on average about 10 percent more profitable than a similar company with an all male board. The study concludes that to boost their profitability, companies should promote gender-neutral career opportunities and take steps to remove the numerous and often difficult-to-observe mechanisms and networks that favor men and hinder women from climbing the executive ladder.

Similar conclusions were made in a study conducted by McKinsey & Company, an international management consulting firm. The study analyzed performance of 89 European listed companies with highest level of gender diversity in top management. The selection criteria included the number, proportion and function of women on the executive committee and presence of more than two women on the board. The study found out that companies with high level of gender diversity in top management outperformed their sector in terms of returns on equity (11.4% vs. sector average 10.3%), operating results (EBIT 11.1% vs. 5.8%), and stock price growth (64% vs. over the period 2005-2007). Another study conducted by McKinsey & Company established a striking correlation between organizational excellence and women's participation in management bodies. The nine criteria analyzed were: leadership, direction, accountability, coordination and control, innovation, external orientation, capability, motivation, work environment and values. The study was based on analysis of answers from 58,240 respondents from 101 large corporations in Europe, America and Asia.

Sources: Finnish Business and Policy Forum (EVA): Female leadership and firm profitability, EVA analysis No.3 (Helsinki, 2007); McKinsey & Company: Women matter: Gender diversity, a corporate performance driver (2007).

2. What can employers do to promote equality?

Promoting equality in company practices means in essence integrating equality as a key value into company core management policies and practices. The key to successful equality promotion is rethinking all the company human resource management practices step by step to ensure that they are free from bias or discrimination. Apart from human resource practices, companies should take non-discrimination as a guiding principle in their business practices, including customer service, marketing and sourcing.

To set concrete objectives, targets and timeframe for incorporation of equality concerns in company human resource practices and business operations, most companies adopt special equality policies and action plans. An important step is to adopt an equality policy where the company commits at high level to promotion of equality. Development and implementation of policies and plans should always be done in consultation with workers' organizations and representatives of groups of employees directly concerned.

2.1 Rethinking human resource management and business practices

To ensure equality and non-discrimination in company recruitment and employment practices employers should establish a structured human resource management system that is in every aspect based on fair and objective criteria, with adequate attention to implementation of affirmative action measures. Today, many companies have a system for managing human resources, which covers, among other:

- recruitment and hiring
- pay and benefits, and other terms and conditions of employment



- training and development
- career progression
- dismissal and retrenchment
- maternity protection
- special schemes available to workers on e.g. flexible working time.

Promotion of equality in company human resource practices means ensuring that decisions related to all the above aspects of recruitment and employment are made in a transparent way, based on fair, objective and relevant criteria, with adequate attention paid to team diversity and company affirmative action measures. Transparent procedures and objective criteria ensure that every employee is treated according to his or her merit and contribution.

Apart from their responsibilities as employers, companies have obligations towards their clients, customers, contractors, suppliers, and other business partners and stakeholders. Companies should ensure that no customers are treated in a discriminatory manner, e.g. refused a service on the basis of their migrant status or disability. Discriminatory bias should not impact any business decisions in the company, such as selection of contractors or suppliers. 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.

Many companies undertake to address discrimination and promote equality and diversity as part of their broader programme on corporate social responsibility (CSR). CSR refers to enterprise-driven initiatives that confirm the company's commitment to the law and to voluntary social compliance standards exceeding the minimums set in the law. The World Business Council for Sustainable Development (WBCSD) has defined CSR as "the commitment of business to contribute to sustainable economic development, working with employees, their families, the local community and society at large to improve their quality of life."

Prohibition of discrimination is included in the major international social responsibility benchmarks against which companies and factories measure their performance, including SA8000 and ISO26000. Many multinational corporations include discrimination in their Codes of Conduct and supply chain management policies, requiring their suppliers to ensure that their human resource and business practices are free from discrimination. Eliminating discrimination and gaining a reputation as an "equal opportunities employer" is thus crucial to securing orders from big international buyers. Elimination of discrimination in respect of employment and occupation is also one of the ten principles of the UN Global Compact. See Management tips 3: Discrimination in SA8000 and ISO26000 below.

Establishing equality of opportunity and treatment as the key value of their company culture and putting it into practice requires active rethinking of company human resource management and business practices.

Management tips2 :

Think about your human resource management and business practices...

- Am I hiring on merit?
- Am I paying my staff salaries based on the value of their work and contribution?
- Am I allocating training opportunities to my staff in a non-discriminatory way?
- Am I promoting on merit?
- Am I taking active steps to ensure that the working environment is free from discriminatory harassment?
- Am I taking my employees' needs in consideration in the organization of the work?
- Am I taking active steps to ensure that my business practices are free from discrimination?
- Are all my employees trained to treat customers in a non-discriminatory way?

Management tips 3:

Discrimination in SA8000 and ISO26000

SA8000: SA8000 is one of world's most well known voluntary social responsibility benchmarks that many well known brands use to measure their own performance and responsibly manage their supply chains. SA8000 is issued by the Social Accountability International (SAI), a global multi-stakeholder standards setting organization. SA8000 requires the certified companies to adopt and implement policies and procedures that protect the basic human rights of workers. The SA8000 includes the following criteria on discrimination:

5. DISCRIMINATION

Criteria:

5.1 The company shall not engage in or support discrimination in hiring, remuneration, access to training, promotion, termination, or retirement based on race, national or social origin, caste, birth, religion, disability, gender, sexual orientation, family responsibilities, marital status, union membership, political opinions, age, or any other condition that could give rise to discrimination.

5.2 The company shall not interfere with the exercise of personnel's rights to observe tenets or practices, or to meet needs relating to race, national or social origin, religion, disability, gender, sexual orientation, family responsibilities, union membership, political opinions, or any other condition that could give rise to discrimination.

5.3 The company shall not allow any behavior that is threatening, abusive, exploitative, or sexually coercive, including gestures, language, and physical contact, in the workplace and, where applicable, in residences and other facilities provided by the company for use by personnel.

5.4 The company shall not subject personnel to pregnancy or virginity tests under any circumstances.

ISO26000: ISO26000 "Guidance on Social Responsibility" is a new guidance document published by the International Organization for Standardization (ISO) in November 2010. Unlike other ISO standards it is not a certifiable standard, but a guidance document which provides practical advice on governance of social responsibility issues in company practices. ISO26000 addresses discrimination and vulnerable groups as one of the human rights issues covered in the guidance document. The guidance document requires organizations to ensure that they do not discriminate against employees, partners, customers, stakeholders, members and anyone else with whom it has any contact or on whom it can have an impact.

Source: Social Accountability International (SAI): SA8000: 2008 Social responsibility, International Organization for Standardization (ISO) website. Available at <http://www.iso.org> [3 Dec. 2010].

2.2 Basics of equality management

To systematically manage equality in company operations and human resource practices, most companies adopt special management tools, such as codes, policies and programmes. To establish equality of opportunity and treatment as a key value of the company, companies are encouraged to formally endorse the Code of Practice on Promoting Equal Opportunity and Treatment and Preventing Discrimination at Work issued by the CEC in cooperation with the ILO.

The most common tools adopted at company level for managing equality in human resource policies and practices include:

- Equality policy stating the company's commitment to equality of opportunity and treatment in all its human resource practices – including recruitment procedure and terms and conditions of work – and fostering a workplace culture free from discrimination and harassment.
- Equality action plan outlining the company's practical steps in realizing the objectives set in the policy
- Affirmative action measures providing assistance to specific groups of job applicants or employees to ensure fair, full and equitable access to equal opportunity and treatment for all. The affirmative action measures are a part of the equality action plan.

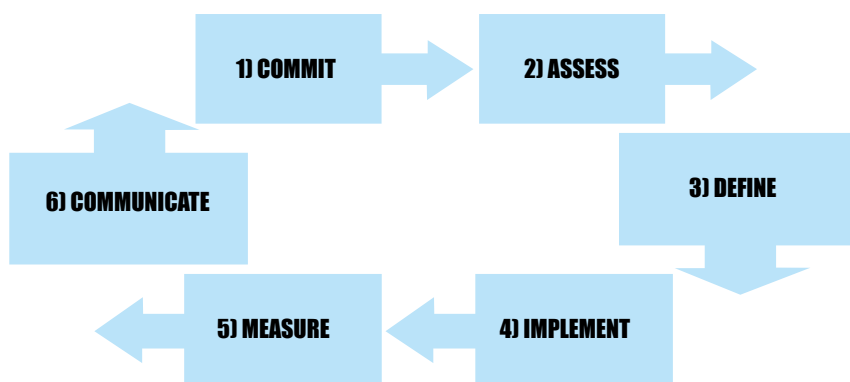
Each company faces different equality related challenges. For this reason, there is no “one-size-fits-all” approach to equality management, as the company equality measures should always be tailored to the company's specific needs. To ensure that the measures adopted respond to the needs of company employees, the workers' organizations and representatives of groups of directly concerned employees should always be involved in development of the measures. Common steps of planning and implementing equality measures in the company include:



- 1) **Commit:** Leadership commitment to equality in all human resource practices and company operations. Most companies do this by adopting an equality policy.
- 2) **Assess:** Assess the existing human resource policies and practices and the current staff composition to identify needs and areas for equality promotion
- 3) **Define:** Define goals, strategies, and specific programmes to promote and mainstream equality. Most companies do this by adopting an equality action plan and affirmative action measures.
- 4) **Implement:** Implement strategies and programmes throughout the company
- 5) **Measure:** Measure and monitor impact and progress toward goals
- 6) **Communicate:** Communicate progress and challenges. Engage with stakeholders for continuous improvement

Equality promotion requires setting clear measurable objectives and taking concrete steps to realize them within a defined timeframe. The best way to do this is to set priorities and implement them in stages. To initiate their equality work, companies should identify a few key issues and formulate programmes to address these issues. After implementing these measures (steps 1-6), a next round of priorities and measures should be identified and implemented. (See figure 1 below.) SMEs with limited capacity to implement large equality programmes can focus their measures on a few priorities, and implement a few targeted and well planned actions. Experience from Europe shows that SMEs often choose to start with ensuring that their recruitment practices are transparent and free from discriminatory bias.

Figure1: Basic steps of equality management



Equality issues that companies need to address change over time, depending for example on changes in the company employee demographics or the general economic environment. For this reason ensuring equality in human resource practices requires commitment to continuous improvement. (See figure 1.)

Management tips 4:

Checklist: How well is your business is doing in equality management?

	Yes	No	Not sure
1. Do you have an equality policy?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. Is equality part of all your work practices, from advertising job vacancies and recruitment to termination?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. Do you have a procedure for resolving complaints related to discrimination and equality?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4. If you have an equality policy and/or procedure for resolving equality related complaints, have you taken action to ensure all staffs have read it/them and know where to obtain a copy/ies if necessary?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5. Have you taken action to ensure all employees understand what is and isn't acceptable and respectful behavior in the workplace?			
6. Have you made it clear to staff that discrimination, harassment, vilification and victimization will not be tolerated, and that any issues or complaints will be handled as fairly as possible without victimization of the person who raises or is affected by the problem?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7. Do you give all staff regular information and training about equality?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
8. Is someone responsible for equality at your workplace?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
9. Do staffs know who the person responsible for equality is?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Source: Adapted from Hong Kong Equal Opportunities Commission: Equal opportunity essentials kit for SMEs (Hong Kong).

See comments on your checklist answers on the next page!

Comments on checklist scores (From previous page)

9 yes's You're doing very well. We suggest that you continue the good work by regularly reviewing your equality policies and work practices.

6 - 8 yes's Your company has made a good start at implementing equality measures. Use the tools in this kit to focus on the areas you have not completed.

3 - 5 yes's You have some way to go in implementing equality. This guide contains a number of tools to help you

0 - 3 yes's Your equality implementation is incomplete. Please read this guide and get more information from the specialized organizations near you.

Source: Adapted from Hong Kong Equal Opportunities Commission: Equal opportunity essentials kit for SMEs (Hong Kong).

Case example 4:

Human Resource Management in Chaoda Warp Knitting Co. Ltd (China)

Initial situation

Chaoda Warp Knitting Co. Ltd., a company with 230 employees, had no specialized human resource department but instead has one full-time person assigned for human resource matters. During the initial assessment, it was apparent that the person responsible for human resource matters was occupied with trivial recruitment routines, induction and separation formalities. The management's perception of HR planning activities was over-simplified. Therefore, there was no specific HR plans, and the HR regulations in use were full of disciplinary measures including pecuniary penalty. There was no systematic internal training plan and the employee turnover rate in 2007 was 18%, higher than the industry average.

Recommendations made by consultants

- Setting up key performance indicators at all levels
- Formulating HR development plan
- Establishing a transparent merit-based HR management system

Actions taken by the factory

The company-level HR management objectives were formulated, defined, and broken down into several sub-level objectives, such as:

- post-festival rate of returned employees (>95%),
- annual employee turnover (<5%),
- coverage of social insurance (=100%),
- rate of pay rise (>CPI, above consumer price index),
- increase in training time (>10%),
- employee satisfaction rate (>90%), etc.

In addition, each objective was required to be measurable by using a specific calculation method or formula. The target value for each objective was pre-defined based on industry experience.

As a mechanism to further improve HR practices, employee satisfaction questionnaires and separation interviews were undertaken. The questionnaire survey was planned twice per year and was conducted on a regular basis. The first satisfaction survey was conducted anonymously in May 2008 whereas separation interview with every outgoing employee was conducted at the time, and was used to identify the causes of employee dissatisfaction and separation.

After analysis of the survey, major problems were identified. These included low level of wages and benefits, poor working environment, long working hours, poor meals, etc. Based on the above mentioned objectives and survey findings, the company identified the problems with its HR practice and established a task team led by the General Manager. The task teams' responsibilities were to improve the company's HR practice with the help of consultants. To meet these HR improvement objectives, a specialized HR department was set up to directly report to the General Manager. At the same time, operational systems were established; HR management routines were streamlined and standardized.

In addition, a performance appraisal system was introduced at the weaving and warp knitting workshops. The evaluation and rewarding was based on open and transparent criteria that were made available to each employee. A mechanism of dialogue between managers and workers was also established in which regular meetings between senior management, middle management and employees were held at regular or irregular intervals. The manager-worker dialogue among other things covered the responsibilities of employees, performance review and analysis of failure to meet expectations.

Adopted in the changes were also, more human-oriented welfare policies such as education allowance for self-study. Other changes established were, introduction of non-discrimination policies and transparent competition based selection and recruitment practices inside the company (for job promotion to supervisors and team leaders). The chance to these promotions was presented to every employee regardless of department, area and gender.

Job-specific training programs were designed and plans are updated every year on a regular basis. The training covers not only technical expertise but also occupational safety. Management also intensified efforts to build corporate culture through various methods, including a corporate song and a business philosophy, and to communicate it to employees through trade union activities, bulletin boards, banners and electronic displays in workshops.

Results and impact

Due to these changes, the general HR management practice improved drastically. The new HR policy has effectively improved the working conditions and quality of life for its employees. As a result employees became more motivated and committed to sustainable improvement of the company's objectives.

When comparison was made between 2006 and 2008 after implementing the project; among the twelve sub-level objectives, seven indicators in 2006 were below the target value and this figure was lowered to one in 2008. Of the three indicators for employee satisfaction in 2006, two have made remarkable improvement in 2008. A major outcome was that participants recognized that they have benefited a lot from this project and realized that HR management is not the sole responsibility of HR department but the responsibility of all managers.

As the General Manager said, "Comprehensive employee welfare is just like a thoughtful messenger who connects the hearts of employees closely with that of the company and enables the company to attract and retain a large pool of talents and transform the employees' sense of belonging into cohesion and morale to keep the company highly viable."

Source: Adapted from ILO: Compendium of case studies with good practices, CSR in the Chinese Textile Industry project (Beijing, 2009).

Case example 5:

Diversity management in European companies

The European Commission commissioned two studies in 2005 and 2008 to map diversity management practices in European companies. The two surveys were both conducted among member companies of the European Business Test Panel (EBTP). The 2008 survey verified that compared to 2005, an increasing proportion of companies recognize the links between diversity and good business performance.

Of the 335 companies participating in the 2008 survey, 56% had established some kind of an equality and diversity policy. 25% of these policies covered all six grounds of discrimination prohibited under European law (gender, age, ethnicity and race, disability, religion and belief, and sexual orientation), whereas 64% covered only some grounds and 12% covered only one ground. The equality and diversity policies handled most often issues related to staff recruitment, retention and management (93%), organizational culture (75%) and work-life balance (70%). 25% of the companies with equality and diversity policies had also adopted affirmative action measures, setting targets for the recruitment, training, or promotion of staff from underrepresented groups.

Almost two-thirds of the surveyed companies recognized that implementation of equality and diversity policies had made a positive impact upon their business. The most common benefits included improved employee motivation and efficiency; access to a new labour pool; company reputation, corporate image and good community relations; recruitment of high quality employees; and opportunities for innovation and creativity. The links between innovation and diversity were recognized by 63% of the companies. Diversity-led innovation had increased significantly more in companies implementing affirmative action measures (83%) compared to companies without such measures (55%). These benefits were equally recognized both in SMEs and in large and very large companies.

Source: European Commission: Diversity management in 2008: Research with the European Business Test Panel (2008).

PART II –EQUALITY IN COMPANY PRACTICES

3. What does equality and non-discrimination at work mean?

Equality and non-discrimination are two sides of the same coin: Equality means absence of discrimination, and discrimination means nullified or impaired equality. Right to equality is a human right, guaranteed in both in the Chinese Constitution and in international legal instruments. Companies should respect the principle of equality both as employers and as economic actors.

As employers, companies should ensure that equality and non-discrimination principles



are respected in all company human resource practices, including:

- recruitment process and recruitment decisions
- remuneration
- performance appraisal
- access to training, promotion and transfers
- conditions of work including hours of work, rest periods, annual holidays with pay, occupational safety and health measures
- social security measures and welfare facilities and benefits provided in connection with employment
- security of tenure of employment, including dismissal and retrenchment.

The principle of equal opportunity and treatment applies to all employees of the company, including part-time workers, casual workers, contractors, and those on commission. Employers should follow the guidelines set out in this guide and the Code of practice for employers on promoting equal opportunity and treatment and preventing discrimination at work issued by the CEC in cooperation with the ILO to ensure that no discrimination is tolerated in the company. All managers, supervisors and staff in the company should respect the equality principle and exercise tolerance and understanding towards diversity to enhance workplace harmony.

Companies should also promote equality and non-discrimination in their business practices. All customers and clients should be treated equally regardless their social origin including rural migrant status, ethnicity, disability or other personal characteristics, and company marketing and PR materials should be made free from any (implicit or explicit) discriminatory or stereotyping messages. Business decisions related to sourcing, contracting etc. should also be made without discriminatory bias. Companies with strong commitment to equality include non-discrimination in their supply chain management policies and procurement policies, and require their suppliers or subcontractors to also adhere to this principle.

3.1 Equal opportunity and treatment

What is equality of opportunity and treatment?

Equality of opportunity and treatment in employment and occupation means that all persons, regardless their sex , ethnicity, religious belief or any other personal attribute, can participate and contribute in the labour market according to their capacity, without interference of discrimination or bias.

At enterprise level, equality of opportunity and treatment means that all recruitment and

employment decisions are made solely with reference to merit, skills, experience or abilities of the applicant or employee in question. Adequate attention should also be paid to team diversity and company affirmative action measures. Employers should not exclude anybody from opportunity or treat anybody differently on the basis of his or her sex, ethnicity, religion, disability, health status or any other personal attribute. The employers should also make sure they do not make any assumptions or generalizations about the abilities and aptitude of a person based on his or her personal attributes, but assess every person with reference to his or her individual abilities and aptitudes. Discriminatory bias, prejudices or stereotyped assumptions should never be allowed to interfere in the recruitment or employment decisions.

The objective of equality promotion is not to nullify all differences in the labour market, but to ensure that differences in labour market outcomes reflect a free choice in the selection of occupations. Free choice of persons from different segments of the society to choose their area of work in accordance with their personal interest and capacities should not be hampered by discrimination and bias in the labour market.

What does the Chinese law say about equality?

The Employment Promotion Law states that all labourers have the right to equal employment and to choosing their job on their own initiative (EPL Art 3.1). This general clause on equality is backed up by a set of discrimination prohibitions protecting specific groups of workers against discrimination.

The employers' obligations on equality are defined in Article 26 of the Employment Promotion Law which states that "when an employing unit recruits labourers, [--] it shall provide labourers with equal employment opportunities and fair employment conditions and shall not have any employment discrimination".

3.2 Discrimination

What does the Chinese law say about discrimination?

Chinese labour legislation protects job applicants and employees against discrimination in employment. Prohibition of discrimination was included already in the Labour Law (LL, in force since 1 January 1995), but the Employment Promotion Law (EPL, in force since 1 January 2008) expanded the scope of protection to cover additional grounds, and gave employees and job seekers a right to lodge discrimination lawsuits directly in the People's Courts.

The grounds of discrimination covered in the Chinese law include:

- Sex/gender, with specific protection to women (EPL Arts 3.2 & 27, LL Arts 12 & 13)
- Ethnicity and race (EPL Arts. 3.2 & 28, LL Arts. 12)

- Disability (EPL Art 29)
- Infectious diseases (EPL Art 30)
- Rural migrant status (EPL Art 31)
- Religion (EPL Art 3.2 & LL Art 12).

In addition, dispatched workers are guaranteed the right to equal pay for equal work under the Labour Contract Law (Art.63).

By ratifying the ILO Discrimination (Employment and Occupation) Convention (1958), No.111 in 2006 China has also undertaken an obligation to prohibit discrimination on the following grounds:

- Political opinion
- National extraction (also known as national origin)
- Social origin .

Legal liability for discrimination

The Employment Promotion Law stipulates that job applicants or employees who feel they have been discriminated against may lodge a lawsuit in the People's Courts against those who commit discrimination (Art. 62). Employers found liable for discrimination shall be ordered to bear civil sanctions in accordance with the law. Most often this means paying compensation to the victim. If the offense constitutes a crime criminal sanctions will be applied. (EPL Art. 68.)

If discrimination has taken place in any aspect of concluding, implementing, modifying, dissolving or terminating the employment contract, the employee may also choose to bring the case to the competent authorities for mediation and arbitration as stipulated in the Labour Contract Law (Art. 77). This avenue for handling the case may be used to solve cases on e.g. discriminatory dismissal. The sanctions under the Labour Contract Law include administrative sanctions (warning, order to rectify etc.), economic compensation, or criminal responsibility. (Chapter VI).



The responsibility for administrative supervision of both the Employment Promotion Law and the Labour Contract Law is on labour departments of local governments at and above county level.

Definition of discrimination

Currently Chinese legislation does not include a definition of the types of acts that constitute discrimination. For this reason guidance needs to be sought from ILO Discrimination (employment and Occupation) Convention, 1958 (No.111) that China ratified in 2006. With the ratification of the Convention China took the obligation to fight discrimination in the sense as it is defined in the Convention.

The Convention No.111 defines discrimination as:

“any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation.”(Art. 1(a))

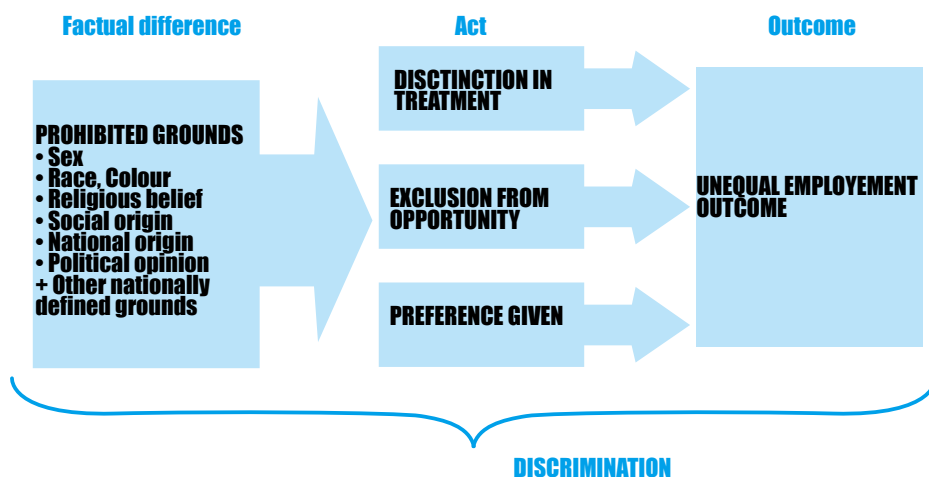
Alongside the seven grounds covered in the Convention any other grounds of discrimination may be added at national level (Art. 1(b)). See the grounds covered in the Chinese legislation above.

The definition of discrimination in Convention No.111 has three components:

- an act of making a distinction, excluding somebody or giving somebody a preference
- a difference between workers which gave rise to this act (sex, ethnicity, etc.)
- an outcome that has a negative impact on certain group of workers

If all three components can be identified in the action taken by the employer, manager or supervisor, the person who has been negatively impacted has been discriminated. (See figure 2 below.)

Figure 2: Three components of discrimination definition under Convention No.111



It is important to notice that the definition of discrimination in Convention No.111 does not require proving that the act by the employer, manager or supervisor intended to discriminate. Also action taken without any intention to discriminate is unlawful discrimination, if it leads to unequal employment outcomes for a group of workers.

Some examples of discriminatory human resource practices include:

Distinction in treatment:

- E.g. difference in pay and benefits paid to local employees and migrant workers
- E.g. laying off more women than men employees when retrenchments are needed

Exclusion from an opportunity:

- E.g. refusing to hire a job applicant who carries an asymptomatic Hepatitis B virus
- E.g. rejecting to promote a competent, dedicated and suitable woman just because she has a child

Preference given:

- E.g. giving preference to persons originating from one's own home province in recruitment
- E.g. hiring only Han Chinese employees in ethnic minority areas

Convention No.111 prohibits both direct and indirect discrimination.

- Direct discrimination refers to situations where unequal treatment of job applicants or employees is made explicitly with reference to the grounds covered in law or the Convention. For example, job advertisements that specify the sex of the candidates are directly discriminatory.

- Indirect discrimination exists when rules and practices appear neutral, but in practice lead to disadvantages primarily suffered by persons of one sex, ethnicity, etc. For example, job advertisements that set irrelevant height requirement that only male applicants are likely to meet constitute indirect discrimination.

Indirect discrimination is more difficult to detect than direct discrimination, and as such more difficult to fight. It is however as harmful as direct discrimination. Employers should take active steps to identify and eliminate indirectly discriminatory elements in the human resource management policies and practices.

Discrimination can take many forms in the labour market and in recruitment and employment practices of an individual company. Discrimination can exist in law (de jure) or in practice (de facto). It can happen as a stand-alone random occurrence, or it can become an institutionalized practice, i.e. seen as a normal way of

conducting business and part of company culture. In addition, discrimination can also manifest as harassment and bullying in the workplace. See Management tips 5: Recognize different forms of discrimination.

There are a few exceptional situations where difference in treatment, exclusion from opportunity or a preference given is legitimate and does not constitute discrimination. These exceptional situations are:

- A personal attribute such as sex, ethnicity or absence of certain disability is an inherent requirement of the job. This means that the job in question can only be performed by a person with these attributes. See Management tips 8: When can a personal attribute be an inherent requirement of the job?
- Excluding a person is necessary because employing him or her could prejudice the security of the State.
- The preferential treatment of certain groups of workers is legitimate when it is to rectify existing imbalances and inequalities (affirmative action), or to address needs for special protection or assistance.

Prohibition of discrimination covers the whole employment cycle, from recruitment to separation of a person from the company. Employers should make sure that all their recruitment and employment policies and practices are based on the principle of equal opportunity and treatment, with adequate attention to implementation of affirmative action measures. Employers should also take active measures to ensure that the working environment at the company is inclusive and free from discriminatory harassment.

Management tips 5:

Recognize different forms of discrimination

Discrimination in law (de jure) means that a law or regulation treats different groups of workers in different ways. For example, in China labour market regulations included previously many discriminatory restrictions on rural migrant workers employment in urban areas. Most of these have been removed since then.

Discrimination in practice (de facto) refers to factual differences in opportunities and treatment of different groups in the labour market or in company human resource practices. For example, high proportion of migrant workers working in low-paid strenuous and dirty jobs indicates that – even after removal of discriminatory regulations – migrant workers' still face many challenges in finding employment in urban areas.

Discrimination usually does not come as a stand-alone event, and those exposed to it often experience it repeatedly in several spheres of life and work. Structural (or systemic) discrimination refers to the institutionalization of discrimination in social patterns, organizational structures and legal constructs. For example, differences in pay levels of women and men (gender pay gap) do not emanate from exceptional stand-alone discriminatory payment practices of individual employers, but are systematically found throughout the labour market. Gender pay gap exists due to persistence of traditional ideas about women's and men's gender roles, their work contribution, and systemic undervaluation of jobs that are considered "women's jobs".

Harassment is also a form of discrimination if it is done on the basis of person's sex, ethnicity, disability or other grounds covered in the law and the Convention. 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. Discriminatory harassment can happen, not only between managers and employees, but also among employees. See Section 6.1 Harassment.

Do not forget these provisions in the Chinese national law

General discrimination prohibitions	<p>“The labourers seeking employment shall not be subject to discrimination on the basis of ethnicity, race, gender, religious belief, etc.” (EPL Art. 3.2)</p> <p>“Laborers shall not be discriminated against in employment due to their ethnicity, race, sex, or religious belief.” (LL Art. 12)</p>
Women	<p>“The State shall ensure that women enjoy equal labour rights as men.</p> <p>When an employing unit recruits labourers, it shall not use sex as a pretext for excluding women from employment or to raise recruitment standards for the females, except for the types of work or posts that are not suitable for women as stipulated by the State.</p> <p>When an employing unit recruits female workers, it shall not stipulate in the labour contract any content, which restricts female workers from getting married or bearing child.” (EPL Art. 27)</p> <p>“Women shall enjoy equal rights as men in employment. Sex shall not be used as a pretext for excluding women from employment during recruitment of workers unless the types of work or posts for which workers are being recruited are not suitable for women according to State regulations. Nor shall the standards of recruitment be raised when it comes to women.” (LL Art. 13)</p>
Ethnicity	<p>“The labourers of all ethnic groups enjoy equal labour rights.</p> <p>When an employing unit recruits labourers, it shall give appropriate consideration to the labourers of ethnic minorities in accordance with law.” (EPL Art.28)</p>
Disability	<p>“The State shall guarantee the labour rights of disabled persons.</p> <p>The people’s governments at all levels shall make an overall plan on the employment of disabled persons so as to create employment conditions favorable to disabled persons.</p> <p>When an employing unit recruits labourers, it shall not discriminate against disabled persons.” (EPL Art. 29)</p>
Infectious diseases	<p>“When an employing unit recruits labourers, it shall not use the pretext that he or she is a carrier of an infectious disease for excluding him from employment. However, before a carrier of an infectious disease is confirmed upon medical test that he or she is cured or excluded from the possibility of spreading the disease, he or she shall not take up the jobs, in which it is likely to spread the disease and which are prohibited in laws and administrative regulations and by the health administrative department of the State Council.” (EPL Art. 30)</p>
Rural labourers	<p>“Rural labourers who enter cities for employment shall enjoy equal labour rights as urban labourers. It is not allowed to set discriminatory restrictions against rural labourers entering cities for employment.” (EPL Art. 31)</p>
Dispatched workers	<p>“The dispatched labors enjoy the same rights of equal pay for equal work as the laborers in the employing unit. If there are no similar positions the dispatched labors filled in the employing unit, the work salary for these positions can be decided by referring to the same or similar positions in the locality where the employing unit is located.” (LCL Art. 63)</p>

Management tips 6:

Case example 6:

Is there any discrimination in Chinese companies?

Report uncovers widespread employment discrimination in Shenzhen

Nearly 60 percent of companies in Shenzhen actively discriminate against prospective employees on the basis of age, sex, health, appearance or residency, a new investigative report has revealed. Women suffer from a disproportionately high level of discrimination, the report found, particularly in the service sector where “appearance” is regularly included in recruitment criteria.

The Shenzhen-based civil society group Hengping spent five months investigating jobs advertised at 1,560 companies in 103 different sectors and found that 868 of those companies used discriminatory hiring practices. Age was by far the most common barrier to employment with 68 percent of the 868 companies placing limits on the age of job candidates, typically 35 years-old or below. Some 37 percent of the 868 companies discriminated on the basis of appearance, 20 percent according to gender, 13 percent on health, and six percent according to household registration (hukou) status.

Height requirements were regularly stipulated for jobs in service industries (a growth area in Shenzhen), with 41 percent of secretaries and front desk clerks, and 38 percent of shop assistants having to exceed specified heights.

Hengping cited the lack of effective legislation and outdated social attitudes as the main reasons for employment discrimination in the city. It noted that while some laws have provisions against discrimination in the workplace, China still lacked a strongly worded specific anti-discrimination law. It also noted that the concept of equality in employment is relatively new to China and old attitudes related to hiring and firing employees are still deeply ingrained in society.

The report calls on the Shenzhen municipal government to eliminate discriminatory clauses in existing legislation and implement new legislation that targets employment discrimination in specific sectors. It recommends setting up a report and complaint system, and that trade unions, and other civil society groups, get actively involved in helping victims of discrimination obtain redress.

Source: Shenzhen Hengping group: Research report on employment discrimination situation in Shenzhen (Shenzhen, 2010). See also Equality at Work in China website, <http://www.equalityatworkinchina.org> [15 Sep 2010].

4. 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. For this reason ensuring that recruitment policies and practices are free from discrimination is of key importance for realizing an equal workplace. Due to its relative importance, for example many SMEs start their commitment to equality by reviewing their recruitment practices.

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

The selection process may contain several elements, for example, development of the job description, advertising, the application form, aptitude tests and a job interview. The employers should follow the guidelines set out in this guide and the Code of practice for employers on promoting equal opportunity and treatment and preventing discrimination at work issued by the CEC 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 to ensure that they are free from discrimination and bias.



4.1 Job descriptions and job advertisements

To ensure that recruitment decisions are based on merit, employers should prepare job descriptions for all jobs before initiating the recruitment process. The job descriptions should refer to the skills and experience needed to perform the job and should avoid making reference to any unrelated job requirements.

Job advertisements should reflect the job description, and state clearly 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 a good practice to include an equality statement in the job advertisement, such as ‘we welcome applications from all parts of society’ or ‘this post is equally open to persons with a disability’. Strategic communication can also be used to encourage applicants from underrepresented 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 recommendations by existing staff. All vacancies should be advertised openly and widely disseminated to attract the widest range of job applicants.

Guidelines for developing job descriptions:

- 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, or other irrelevant personal attributes, as anybody who is capable of doing the job is equally eligible to apply. Requiring the applicant to have a specific personal attribute (e.g. specific sex, religion, absence of a specific impairment or disability) is only legitimate if this attribute is an inherent requirement of the job. The legitimate reasons for requiring the personal attribute in questions should be stated in the person specification. See Management tips 8: When can a personal attribute 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”.
- Be explicit with your use of language: ‘needs to reach and bend to pick items from shelves’ is better than ‘needs to be physically fit’, and ‘needs to give clear information to English speaking clients by phone’ is better than ‘needs a good command of spoken English’.

Guidelines for preparing job advertisements:

- Job advertisements should provide sufficient information about the job vacancy: e.g. pay, 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 sex, age, ethnicity, religion or other personal attributes that are not related to the job. The advertisement should not include any drawings or photos that could give the impression that only person of certain sex, ethnicity etc. is sought or preferred by the employer.
- If the company is implementing affirmative action measures, such as specific recruitment programmes targeting under-represented groups of employees (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 ‘women and men and persons from all ethnicities are encouraged to apply’.
- Clearly define how applicants should apply, closing date and interview dates.

Guidelines for placing a job advertisement:

- The job advertisement should be widely disseminated to attract the widest range of job applicants. 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.).
- 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.
- As an affirmative action measure to attract applicants from a previously underrepresented 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.

Management tips 7:

Criteria that should not be in job advertisements:

Age	<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 attributes 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"> • "Candidates are required to load and unload sacks of rice of at least 10 kg each." • "Candidates are required to handle heavy equipment."
Race	<p>Race should not be a criterion for the selection of job candidates as selection based on race is unacceptable. Job advertisements featuring statements like "Han Chinese preferred" and "Mongolian preferred" are therefore unacceptable.</p>
Language	<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"> • "Chinese language Teacher for Pre School Centre, fluency in Mandarin Chinese required." • "Translator for a leading Mongolian language sports magazine. Proficiency in Mongolian is a must." • "Tour Guides to take Japanese/ Indian tourist groups. Knowledge of Japanese/ Indian languages is essential."
Gender	<p>Where practical requirement of the job dictates the need for employees of a particular sex, this must be supported by valid reasons. In addition, words or phrases that suggest preference for job candidates of a particular gender such as "female working environment" or "waitress" should not be used in the job advertisements.</p> <p>Example:</p> <ul style="list-style-type: none"> • "Actress for a supporting female role in a play" • "Women's Fashion Boutique requires salesgirl to model clothes while on the job"
Marital status	<p>Marital status is an irrelevant criterion in employment; as jobs can be performed equally well by either married or single persons.</p>
Religion	<p>Religion is unacceptable as a criterion for recruitment EXCEPT in cases where employees have to perform religious functions as part of the job requirement. In such cases, the requirements should be clearly and objectively presented.</p>

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

Management tips 8:

When can a personal attribute 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 attribute 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 attributes shall not be deemed to be discrimination.

Examples:

- 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 Muslim school may require that teachers leading pupils in prayer need to be Muslims.
- Employees working in a halal kitchen must be Muslim and certified to do that job in accordance with the local religious practice.
- Political opinion may be an inherent requirement for high level positions in the government.
- Absence of vision impairment is an inherent requirement of a job for pilots.

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 Muslim school can only require staff involved in religious functions to be of Muslim 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 China (Beijing and Bangkok, 2010), Module 1.

4.2 Job application forms

Application forms are often used to speed up the selection and short-listing processes. The fields of the job application form should only ask information relevant to assessing an applicant's suitability for a job. 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.

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 application forms should also allow applicants to provide information on relevant



experience, skills and expertise gained through involvement in activities which are unpaid or voluntary.

- If the position requires a commitment, such as a willingness to travel frequently, the application form should ask about applicants' ability and willingness to do so.
- 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.
- 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 including rural migrant status of the applicant should also not be asked.
- Applicants should not be asked to provide personal medical information.
- Persons with a disability should not be asked for information which 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.

4.3 Short listing

Short listing and selection of candidates should be done on the basis of consistent selection criteria. The selection criteria should be developed on the basis of the job description, and they should set out the qualifications, skills, knowledge and personal attributes 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. Team diversity and company affirmative action policies should also be given adequate attention in the process of short listing. See Management tips 9: Be aware of your bias below.

Guidelines for short listing

- To avoid prejudice or bias the short listing should be preferably 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.

4.4 Selection and ability tests

Well-designed, properly administered and professionally validated ability 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.

The usefulness of selection tests depends critically on the design of the test, its reliability as predictor of performance of applicants with different backgrounds, and its fair administration by staff trained in assessment methodologies and equal opportunity and treatment at work. It is recommended that ability 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

- 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 whose first language is not Chinese understand the instructions. Tests that are easy for speakers of Chinese as a first language may present problems for people who are less proficient in the language.
- All candidates should take the same test without exception.

Case example 7 :

Discriminatory use of selection tests (UK)

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. Her complaint, when she found that white workers in the same situation had been given temporary or permanent contracts without having to take a test, was not investigated, and she brought 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 also found that the aptitude test was indirectly discriminatory). It also found no evidence that the Post Office's 'intention to operate an equal opportunities policy ... was actually implemented on a day-to-day basis'. The tribunal awarded 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. As summarized in UK Commission for Racial Equality: *Statutory code of practice on racial equality in employment* (London, 2005).

4.5 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 the 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.

After the interview

After the interviews the interview panel should review and discuss the interview results together and record their assessment of the applicant's ability to meet the selection criteria.

Management tips 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 unrecognized 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 decision make. 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", in HR magazine (2006) Vol. 51, No.2, February; Hong Kong Equal Opportunities Commission: "Pre-hiring and post-hiring procedures" and "Use of consistent selection criteria", in Good management practice series (Hong Kong).

Interview do's and don'ts

Age	<p>Acceptable questions:</p> <ul style="list-style-type: none"> • None. Asking about years of working experience is acceptable. <p>Unacceptable questions:</p> <ul style="list-style-type: none"> • Any question designed to discover someone's age.
Disabilities	<p>Acceptable questions:</p> <ul style="list-style-type: none"> • Inquiries about whether the applicant has the ability to perform specific job functions. (Provide applicant with a job description.) Asking the applicant to describe or demonstrate how he or she would perform job tasks. • 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. <p>Unacceptable questions:</p> <ul style="list-style-type: none"> • 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?"
Education	<p>Acceptable questions:</p> <ul style="list-style-type: none"> • Inquiries regarding degrees, courses, equivalent experience, or training required for the specific job. <p>Unacceptable questions:</p> <ul style="list-style-type: none"> • General questions about high school or college degrees unless you can prove the educational degree inquired about is necessary to perform the job.
Employment	<p>Acceptable questions:</p> <ul style="list-style-type: none"> • Any question related to experience, strengths and weaknesses, promotions, accomplishments, current salary, salary requirements, reasons for leaving a position. <p>Unacceptable questions:</p> <ul style="list-style-type: none"> • None
Family Status	<p>Acceptable questions:</p> <ul style="list-style-type: none"> • 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, 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>Unacceptable questions:</p> <ul style="list-style-type: none"> • 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. • 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. • 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.
Financial Status	<p>Acceptable questions:</p> <ul style="list-style-type: none"> • None, unless job related. <p>Unacceptable questions:</p>

	<ul style="list-style-type: none"> 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. Questions about home ownership or car ownership (unless owning a car is required for the job).
Height and Weight	<p>Acceptable questions:</p> <ul style="list-style-type: none"> 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). Must be able to prove that a specific minimum or maximum height or weight is required to perform the job. <p>Unacceptable questions:</p> <ul style="list-style-type: none"> Any inquiry about height or weight not based on the actual job requirements. 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.
Marital Status	<p>Acceptable questions:</p> <ul style="list-style-type: none"> None. <p>Unacceptable questions:</p> <ul style="list-style-type: none"> Whether the applicant is married, single, divorced, separated, engaged, widowed.
National origin	<p>Acceptable questions:</p> <ul style="list-style-type: none"> Inquiries into applicant's ability to read, write and speak Chinese or foreign languages when required for a specific job. <p>Unacceptable questions:</p> <ul style="list-style-type: none"> 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.
Pregnancy	<p>Acceptable questions:</p> <ul style="list-style-type: none"> Inquiries about the applicant's anticipated duration of stay on the job or anticipated absences – only if made to both male and female applicants. <p>Unacceptable questions:</p> <ul style="list-style-type: none"> 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.
Race or Color	<p>Acceptable questions:</p> <ul style="list-style-type: none"> None. <p>Unacceptable questions:</p> <ul style="list-style-type: none"> Any questions about race, color, or complexion of skin.
Religion or Creed	<p>Acceptable questions:</p> <ul style="list-style-type: none"> 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 <p>Unacceptable questions:</p> <ul style="list-style-type: none"> Questions about applicant's religious denomination, religious affiliation, church, pastor, or religious holidays observed.

Residence	<p>Acceptable questions:</p> <ul style="list-style-type: none"> • Inquiries about the applicant's address needed for future contact with the applicant. <p>Unacceptable questions:</p> <ul style="list-style-type: none"> • Whether the applicant owns or rents own home (denotes economic class). Names and relationship of persons with whom the applicant resides.
Sex	<p>Acceptable questions:</p> <ul style="list-style-type: none"> • None, unless sex is an inherent requirement of the job in question. <p>Unacceptable questions:</p> <ul style="list-style-type: none"> • Reference to the applicant's sex, if a particular sex is not an inherent requirement of the job.
Union affiliation	<p>Acceptable questions:</p> <ul style="list-style-type: none"> • None. <p>Unacceptable questions:</p> <ul style="list-style-type: none"> • The Labor Management Relations Act makes it illegal for employers to discriminate on the basis of union membership.

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

4.6 Pre-employment medical examinations

Pre-employment medical examinations are commonly 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 to assess the applicants' ability to carry out the inherent requirements of the job.

Requiring job applicants to take medical examinations is normally justified for the following reasons:

- Determining whether the worker has the physical ability to perform the job in question.
- Ensuring health and safety of co-workers and customers (in those jobs where health requirements have been set in the law).
- Determining entitlement to social benefits.

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 HBV or HIV virus carriers is unlawful under the Chinese legislation.

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.

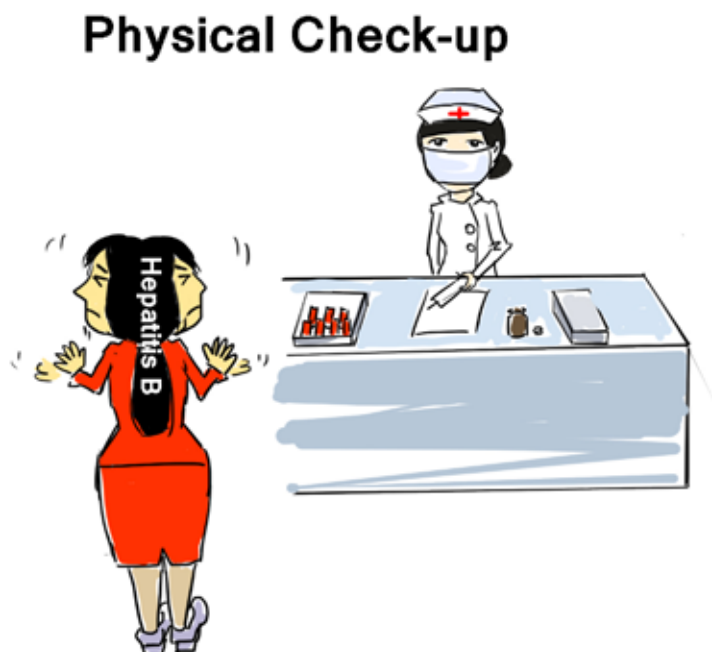
Pregnancy tests

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. In most jobs, pregnancy does not impact 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.

Employers shall also not restrict female recruits from getting married or bearing a child (Employment Promotion Law, Art.27). It is likewise unlawful to dismiss women, or otherwise unilaterally terminate their employment contracts or service agreements on the grounds of marriage, pregnancy, maternity leave or nursing. (Law on the Protection of Rights and Interests of Women, Art. 27.)

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

Checks for infectious diseases



The Employment Promotion Law states that employers shall not exclude applicants with the pretext that they carry an infectious disease. The carriers of infectious diseases can only be excluded from certain job positions where the absence of the virus has been, due to a medical necessity, stipulated as an occupational requirement in law, administrative regulations or orders of the State Council health department. (EPL Art. 30.) Recent regulations supplementing the Employment Promotion Law by specifically prohibiting HBV testing include:

- The Regulations on Employment Services and Employment Management (2008), which stipulate that any employer who has imposed a HBV test shall be subject to a fine within 1,000 yuan.
- The Notice on Further Standardizing Admission Physical Examination and Protecting the Rights of HIV Carriers in Schooling and Employment (2010), which confirmed the ban on use of HBV testing in recruitment and school entry examinations, and gave further instructions to local governments on monitoring the legal compliance.

The recent legislative changes in China have considerably narrowed the scope of jobs in which carriers of infectious diseases can be lawfully excluded. For example the Food Safety Law (2009) and the Regulations on the Implementation of the Food Safety Law (2009) removed restrictions of employing HBV positive employees in the catering sector. In 2010 a series of regulations and measures were revised to further reduce restrictions on employment of HBV carriers in related industries. The revised regulations include the Regulations on Health Management at Public Places; the Measures on the Management of Preventive Physical Examination; the Measures on Health Supervision and Administration of Drinking Water; the Measures on Health Supervision of Group Dining of Students; and the Hygienic Practices for Sterile Product Manufacturing Enterprises.

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.

Assessing the ability of a disabled applicant 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.

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. Also the Chinese Law on Certified Medical Practitioners includes provisions on medical practitioners' legal obligation to protect and respect patients' privacy.

Case example 8:

Compensation for HBV discrimination in recruitment (China)

On 23 May 2008, Chaoyang District Court in Beijing awarded Gao Yiming nearly 20,000 yuan in compensation after he was refused employment at a Beijing Bide Development Telecommunications Technology company on the grounds that he was carrying the Hepatitis B virus (HBV). This was the first time a HBV discrimination case had been successfully litigated in China. Earlier cases had been concluded through court ordered mediation or through private agreements between the plaintiff and defendant.

The Chaoyang District Court made a judgment awarding the plaintiff economic compensation of 17,572.75 yuan and a further 2,000 yuan in compensation for the mental anguish caused by the company's withdrawal of his job offer. The company was also ordered to apologize in writing to the plaintiff for its actions.

Source: J. Li: "Laborer won Beijing's first case on HBV discrimination", in Xinhua (Beijing, 24 May 2008).

Case example 8:

Job seeker successfully sues hospital for violation of right to privacy (China)

Mr. Guo Lin, a 25 year-old university graduate with Hepatitis B has, for the first time in China, successfully sued a hospital for violating his right to privacy after it gave the results of his blood test to a prospective employer.

Guo Lin's lawsuit was significant, firstly because it targeted the hospital that conducted the test rather than the company that ordered it, and secondly, because it focused on the right to privacy (a relatively new concept in China) and not employment discrimination per se, as has been the case with most HBV lawsuits in the past.

Guo Lin had applied for a position at Hangzhou subsidiary of Taiwanese electronics giant, Foxconn May 2007, but was refused after he was found to be HBV positive. Guo decided to sue the local Xiasha Hospital that carried out the examination based on the provisions of the "Opinions on Protecting the Employment Rights of those with the Hepatitis B Surface Antigen" (《关于保护乙肝表面抗原携带者就业权利的意见》) issued by the Health Ministry just two weeks before his blood test. The opinion states that "When carrying out employee health checks, every medical institution should seek to protect the right to privacy of those with the Hepatitis B surface antigen."

The Honggan District Court in Hangzhou accepted the case and awarded Guo 5,000 yuan compensation in a mediated settlement on 9 October 2009.

Source: J. Wang and G. Zhang: "First victory in the case of violation of privacy of HBV carrier", in China Youth Daily (Beijing, 23 Oct 2009).

4.7 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 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.

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.

Monitoring

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. The employers should:

- check whether a reasonably diverse range of people succeeds at the application form stage,
- check whether a reasonably diverse range of applicants passes any selection tests used,
- check whether a reasonably diverse range of applicants passes the selection interview,
- check whether results vary when selection is done by managers, by a specialist recruitment service or by a selection board.

See Section 8.5 Monitor the equality policy and action plan.

4.8 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 adjust to their new working environment and to understand their duties and responsibilities. This can help to improve understanding and communication between management and workers, promote higher productivity for the enterprise and reduce potential workplace disputes.

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 6.1 Harassment
- What kind of mechanisms the company has for handling grievances, including complaints on discrimination or harassment against colleagues or managers See 9. Dealing with discrimination related complaints.

Induction offers the employer also 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.

Guidelines for induction training:

- Employers should ensure that new recruits are always given induction training.

- 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, appoint a “buddy” or colleague to help guide and mentor the new employee. Check whether the person acting in the mentor role requires training.
- During the induction the new employee should be provided information about the expected standards of performance.

4.9 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.

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. The Employment Promotion Law prohibits discrimination in provision of job intermediary services and obliges employment agencies to respect the principle of equal employment opportunity and treatment (Art.26).

The equal recruitment practices should be applied to hiring of both temporary and permanent staff. It should also be noted that under the Chinese Labour Contract Law dispatched workers have the same rights of equal pay for equal work as the regular employees of the employing unit (Art. 63).

5. 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 asset of their company – their people. 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 Equal Opportunity and Treatment and Preventing Discrimination at Work issued by the CEC 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 and training and to promotion based on merit, with adequate attention paid to diversity in the team composition. Knowing that they have as good a chance as any of their co-workers to get promoted if they work hard motivates



employees 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.

5.1 Pay and benefits

The employers should pay employees wages commensurate with the value of the job. Both the base salary and entitlements to any salary increments or benefits should be determined based on objective criteria.

Individual differences in pay due to different performance ratings are not in themselves discriminatory, but the performance assessment systems should be free from bias, and applied in a non-discriminatory way. Employees should always be entitled to know how their pay is made up, including e.g. the system for calculating the performance pay.

Equal pay for work of equal value

The principle of “equal pay for work of equal value” was established in the ILO Equal Remuneration Convention, 1950 (No.100), which China ratified in 1990. The Convention requires equal pay not only for workers performing the same job, but also to workers performing different jobs that are of “equal value”. The following criteria are often used when comparing the value of different jobs:

1. **Skill:** Knowledge and abilities accumulated through education or practical experience.
2. **Effort:** Physical or mental effort, or physical, mental or nervous strain connected with performance of the job
3. **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
4. **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.

At company level a pay equity audit can help make sure that the remuneration levels for all jobs are determined in a non-discriminatory way. Pay equity audits 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 rural migrant workers.

Pay equity audits are undertaken to determine if any job in the organization is paid a disproportionately lower wage compared to other equally demanding jobs. 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 (or e.g. migrant workers). In China, 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". While the overall income levels are rising in China, the gender pay gap is still obvious, and has a tendency to become wider. 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 8.2 Conduct and equality audit for guidance for conducting the pay equity audit.

Salary increments and benefits

An individual employee's pay is often a composite of base salary and additional salary increments (such as seniority pay or family allowance) or benefits in kind (such as provision of free lunches). Eligibility to all these salary increments, benefits, facilities and services needs to be based on objective criteria and applied in a non-discriminatory way.

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 this purpose all the following benefits should be paid in a non-discriminatory manner:

- increments based on seniority
- housing allowances or subsidized dormitory accommodation
- transportation facilities or allowances
- family allowances and increments based on marital status
- pensions
- private health insurance plans
- commissions and bonuses
- entitlement to annual leave and holiday allowances
- lunch vouchers, discount travel services, or any other in kind benefit with monetary value
- any other fringe benefits available to employees and workers
- bonuses

Employers need to make sure that the company rules, requirements and practices on access to the above salary increments, benefits, facilities or services do not discriminate against any group. The criteria for eligibility should be objective.

Examples:

- For example, seniority-based progression (in which increases in salary are awarded with each year of service) is not discriminatory as such if all employees are entitled to seniority increments. However, if salaries in positions mainly occupied by migrant workers are not linked to seniority-based progression, this constitutes indirect discrimination of migrant workers.

- For example, providing senior managers with a private health insurance as part of their remuneration package is not discriminatory as such, but may be a perfectly justifiable practice to reward them for their effort. However, if the senior managers of the company are predominantly men and mid-level managers are women, the pay system may be considered sex discrimination. The value of the two jobs should be assessed to see whether the higher pay of senior managers (including the monetary value of the health insurance) is proportionate to their higher level of responsibility.

Performance pay

Performance pay refers to salary increments paid for good individual work performance, based on the performance ratings produced as a result of a performance appraisal. To ensure that performance pay is applied in a non-discriminatory way, the employers should pay careful attention to the design and application performance appraisal systems. Compared with the above mentioned salary increments and benefits that are based on objective facts (e.g. years of service in the company or the position in the company), performance pay systems are much more prone to give rise discrimination.

Prejudice and partiality in the performance appraisal systems leads to biased performance ratings, and consequently to discrimination in payment of performance increments. Employers should ensure that biased assessments of contribution and output of certain groups of workers are not used – consciously or unconsciously – as a pretext for paying them lower salaries. It would also be discriminatory to require some groups of workers to show proof of their output, if others are not required to do so.

See 5.3 Performance management and appraisals.

External market factors impacting the pay

Jobs which are different in nature but equal in value should be remunerated the same. At the very least, differences in remuneration should not be based on the sex, ethnicity, social origin including rural migrant status 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. See Case example 9: Equal pay for midwives and medical technicians (Sweden) for a practical example.

In the same way, regional pay differences may also impact on salaries in different branches of the company. While individual employers may not have much impact on 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 for their company, the employers need to pay all their employees at a fair and equitable level.

Case example 10:

Equal pay for midwives and medical technicians (Sweden)

The Swedish Labour Court approved in February 2001, for the first time, the use of a job evaluation procedure in a wage discrimination case involving two midwives and a medical technician all working in the Orebro regional hospital. The dispute in question related to whether the two midwives (claimants) represented by the Swedish Equal opportunities Ombudsman, had been subjected to unlawful wage discrimination, as their employer, the county council (respondent) had paid a lower salary to them than to the male medical technician.

The Labour Court used the job evaluation procedure to determine the value of the job of a midwife and a medical technician by looking at assessment criteria related to “knowledge and competence”, “effort”, “responsibility” and “working conditions”. The Court found that in all these four areas that the demands of the two midwives’ work were not less than the medical technician’s work, and that these workers carried out tasks of equal value.

However, the Court went on to analyze whether the county council (respondent) had sufficiently shown that the wage differences identified in the case had no connection to the sex of the workers, but arose from other factors – such as collective agreements, differences in seniority, and the labour market situation. The Court asserted that the fact the salaries had been set by collective agreements did not automatically mean that no wage discrimination had occurred. However, the Court found that a part of the identified wage difference was related to the age of the workers, meaning that the two midwives would have had a higher salary had they been the same age as the medical technician. In addition, the Court noted that there was a large alternative labour market for medical technicians in the private sector, but not for midwives. The county council had no alternative but to pay a competitive salary to the medical technician in order to counter the market forces and retain him as an employee.

Based on the above analysis the Labour Court concluded that work performed by the two midwives and the medical technician was of equal value, and that there was thus a presumption for wage discrimination. The county council had, however, in referring to the age differences, the labour market situation and the existing collective agreements proved that the wage differences had no connection with the sex of the three employees. There was thus no unlawful wage discrimination.

The Labour Courts decision was no unanimous. Three out of seven members of the Court had a dissenting opinion. The latter’s main argument was that the county council had not proved sufficiently that medical technicians had such a high value as claimed on the private labour market.

Source: The Swedish Labour Court, Dom nr 13/01, mål nr A 190/97. See EIROnline: Labour Court approves job evaluation in wage discrimination case (28 March 2001).

5.2 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
- 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 (e.g. rural migrants) more hazardous tasks than other employees constitutes discrimination. Also giving an unjust preference to some employee by continuously giving him or her 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. Sexual harassment in the workplace is a form of occupational hazard, causing fear, stress, anxiety and physical sickness among the victims. Employers should ensure that no sexual harassment is tolerated in the workplace. 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' organization 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 employees' special needs into account when allocating work shifts and holiday periods. For example, Muslim workers who prefer to go to the Mosque on Fridays should be allowed a day off on Fridays, unless this causes undue hardship to the work organization. If possible, ethnic minority employees should also be allowed to take holidays on the traditional festivals.

See also Section 6.4 Reasonable accommodation.

5.3 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 increment, bonus quantum, promotions, transfers, termination and retention.
2. Identify employee potential for career development.
3. Establish a relevant training and development plan.
4. Assist management in business planning by providing well-documented information on the organization's workforce.

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 tips 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' organization 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' organization 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.

5.4 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 migration status. If significant disparities exist, steps need to be taken to encourage the underrepresented 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.
- 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. The eligibility criteria and terms and conditions should be made known to all employees. 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 (e.g. language training needs for ethnic minorities) should be taken into account in planning. Workers' organizations and representatives of the groups of directly concerned employees (e.g. women, minority employees) 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. Counseling can be an important part of career development, particularly for employees unsure of their employment potential.

- 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.

5.5 Promotion and career development

The career development of individual employees 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. Employers should make sure that managers involved in making decisions on promotions are trained 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 a 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.
- The promotion process should take into account the current job performance and the aspirations and abilities of the employee. The promotion process should be based on a systematic analysis of the applicants' skills, qualities, aspirations and potential. 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.
- A company may also establish a formal process for identifying employees with promotion potential. The process has to be objective and focused on assessing the employee's abilities, potential and aspirations.
- 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.



5.6 Termination of employment

Employers should ensure that employees are not dismissed, laid off, made to retire or given unfavorable treatment on discriminatory grounds. Dismissals and retrenchment should be carried out in full compliance with the provisions of the Labour Contract Law, and the principle of equal treatment should be respected. Women workers should be allowed to retire at the same age as men, if they so wish.

Dismissal

Dismissal must always be fair and reasonable. A decision to dismiss an employee should always be based on documented poor performance or misconduct. For this purpose it is essential that employers maintain accurate and non-biased records on their employees' performance and conduct. 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.

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-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. workers with disabilities or infectious diseases or rural migrant workers) 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. Also when there is downgrading or short-time working the arrangements should be implemented in a non-discriminatory way. Employers should always consult the workers' organization and the representatives of groups of workers directly concerned about the proposed redundancies and the criteria for selection.

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 may be the main income in her family.

Monitoring dismissals and retrenchment

Employers should keep 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.

Equal retirement age

Currently, the provisional regulations issued by the State Council set the retirement age of enterprise employees at 60 for men, at 50 for women workers and at 55 for women cadres and professionals. In case of women cadres and professionals, the employers have however the possibility to allow continued employment until age of 60. This possibility was granted by the regulations ZF No.13 [1982], RTF No.5 [1990] and ZZB ZTZ No.22 [1992] adopted by the Organizing Committee of the Central Committee of the Communist Party of China (CCCPC). In practice, this opportunity to allow women cadres and professionals to work until the age of 60 is rarely utilized. Only 15.5% of respondents to an ILO-ACWF study in 2010 responded that their employers follow the policy of the same retirement age for men and women cadres and professionals. Only 7.1% of the respondents' workplaces applied the same retirement age for all women and men employees.

Employers should not require women employees to retire earlier than men workers, if they wish to continue working. Forcing women to retire early can be considered as sex discrimination, because it leads to significant differences in income and pension benefits between women and men. Especially women cadres and professionals see a large gap between their working and post-retirement incomes. The study commissioned by ILO found out that the lifetime income for a woman will be on average 168,500 RMB less than for a man of the same age, education and years of service. In addition, the study found that early retirement leads to significant differences between men and women in career development opportunities; 37.8 % of the respondents believed that men get promoted faster than women under the same conditions and 28 % believed that employers had different age requirements for men and women.

The UN Committee on the Elimination of Discrimination against Women (CEDAW) has recommended abolishment of different mandatory retirement age for women and men in its General recommendation adopted in 2010. Instead the CEDAW encourages setting an optional retirement age which allows women to continue to work and accumulate pension benefits at par with men, if they wish.

6. Creating a productive 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 discriminatory harassment (including sexual harassment) is tolerated; and
- 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 that 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 equal opportunity and treatment and preventing discrimination at work issued by the CEC in cooperation with the ILO.

6.1 Harassment

Employers should ensure that all employees in the organization can enjoy a safe and respectful working environment free from discriminatory 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 ground covered in the law or Convention No.111. Actions constituting discriminatory harassment may include:

- offensive jokes, personal insults, persistent criticism, derogatory language,
- unwanted physical contact,
- threatening behavior and gestures, or
- '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.

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 of women is prohibited in the Law on the Protection of Rights and Interests of Women. The victims of sexual harassment can file a complaint to the employers or competent authorities. (Art. 40.) Several provincial governments have also adopted local regulations to enhance the protection against sexual harassment.

Sexual harassment refers to conduct of a 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;

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 Criminal 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.

Impact of discriminatory and sexual 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. It is both in the employees’ and the employer’s interest to ensure that discriminatory harassment does not occur in the workplace.

Guidelines for handling and preventing discriminatory and sexual harassment at workplace

- Ensure that your company has a clear senior management commitment to prevent harassment at the workplace.
- Adopt a policy on handling and preventing discriminatory and sexual harassment in the workplace. The harassment policy can be adopted either separately, or as part of the company 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.
- Ensure that all staff and managers know that discriminatory and sexual harassment is not accepted in the workplace.
- Foster and promote respectful company culture to build a workplace free from discriminatory and sexual harassment.

See 8.1. Commit to equality, adopt an equality policy and 9. Dealing with discrimination related complaints.

Case example 11:

Sexual harassment leads to a penalty of 5 months detention (China)

Liu Lun, 29, human resource manager of a company in Chengdu, capital of Sichuan province, was recently sentenced to five months imprisonment for sexual harassment. This gives him the dubious distinction of being the first person to be penalized under the Chinese Law on the Protection of Women's Rights and Interests that came into force on Dec 1, 2005.

Liu called Chen Dan on March 11, shortly after she began working at the company, saying that he wanted to talk to her about her job after work hours. When Chen arrived at Liu's office at about 5 pm, Liu lunged, forcibly trying to hug and kiss her. Upon hearing Chen's cries a co-worker next-door called the police, and Liu was caught red-handed and detained.

The local court considered Liu's behavior constituted sexual harassment as defined in the Law on the Protection of Women's Rights and Interests, but circumstances dictated that he be sentenced for the crime of indecent assaulting or insulting a woman according to the Criminal Law.

Source: China Daily: "First sexual harassment case gets 5 months' jail" (Beijing, 24 July 2008).

6.2 Maternity protection

Employers should ensure full compliance with the national and local regulations on maternity protection, and provide maternity insurance to all woman workers. At national level, the legal framework for provision of maternity protection and maternity insurance is set in the Labour Law, the Regulations on Labour Protection of Women Workers, and the Regulations on Maternity Insurance. Employers should be fully aware of the regulations adopted by the local congress and government to enhance maternity protection.

Maternity protection should be equitably applied to all categories of workers, including women in part-time work. 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 the pregnancy and after the childbirth. Taking care of women workers well-being during maternity can bring benefits also to the employers, as well-supported working mothers are more likely to return to work after maternity leave. This enables employers to keep trained, experienced and motivated workers with strong loyalty to the employer.

Maternity protection consists of five elements: maternity leave, cash and medical benefits, health protection, employment protection and non-discrimination, and breastfeeding.

1. Maternity leave

Employers should ensure that all pregnant women employees are entitled to maternity leave for the minimum period of 90 days, including 15 days before the childbirth, as stipulated in the Labour Law and the Regulations on Labour Protection of Women. Employers should also provide additional 15 days of maternity leave in cases of difficult delivery or birth of two or more children, as stipulated in the national law, and abide by local regulations providing for longer leave than the national minimum standard.

Women workers should have the right to return to same job or one with same pay after maternity leave. Pregnant employees 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.

2. Cash and medical benefits

Employers should provide all female employees, including rural migrant workers, with maternity insurance and pay their contributions to the insurance fund as stipulated in the Regulations on Maternity Insurance issued by the local government. All women workers should have access to monthly childbirth allowance during the maternity leave. Medical fees related to pre-natal examination and the cost of delivery, operation, hospital care and medicines should be paid from the childbirth insurance fund.

3. 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. Pregnant women should also be entitled time off for medical check-ups.

The Labour Law prohibits engaging pregnant or breastfeeding women in work with grade III physical labour or other work prohibited by the State. Women workers who are seven or more months pregnant should also not be requested to work night shifts or overtime.

4. 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, 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 Law on the Protection of Rights and Interests of Women and the Employment Promotion Law. Maternity leave should be counted as work for purposes of calculating seniority.

Including any contents in the labour contract restricting female workers' right to get married or to bear a child is prohibited under the Chinese law. Employers should not threaten employees with dismissal or any other employment decision that negatively affects their employment status in order to prevent them from getting married or becoming pregnant. 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.

5. Breastfeeding

New mothers should be provided breastfeeding breaks and facilities to support continued breastfeeding upon return to work. If the working environment of a pregnant or breastfeeding woman involves risks, such as physical strain or exposure to hazardous agents, the health of breastfeeding woman and her child should be protected as described above.



6.3 Work-family balance

In China the population and family structures are changing. This leads to increased family responsibilities to 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 employees but also 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 those with young children, sick or old family in need for care, or those 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 the 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.

6.4 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. Reasonable accommodation is most often provided to workers with a disability or other health condition, but it is a good practice to provide reasonable accommodation also to workers with special needs related to their religion, family responsibilities or other reasons.

Some examples of reasonable accommodation measures include:

- Modify office space so that an employee using a wheelchair can access it.
- Allocate work shifts so that Muslim employees can have time off on Fridays to go to the Mosque.
- 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.
- Allow Muslim women to use a headscarf with their work uniform.
- Offer an alternative post in the company to an employee who has sustained a disability during employment.

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.

Employer 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 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.



With regards to persons with disabilities, in China employers can apply for financial support to cover the costs of accommodating the disabled worker from the Employment Security Fund for Disabled Persons. The Employment Security Fund for Disabled Persons is administered by the China Disabled Persons' Federation.

7. 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 Chinese legislation and international legal instruments cover not only employment but also the political, economic, social, cultural or any other field of public life. 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. While in China

no legislation explicitly on these issues exists so far, it is a good business practice to ensure non-discrimination in provision of goods, services and facilities. Companies should ensure that no customers are harassed or treated in a discriminatory manner, e.g. refused a service on the basis of their migrant status, 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. 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 supply chain. It is a good practice to set compliance with the Code of practice for employers on promoting equal opportunity and treatment and preventing discrimination at work issued by the CEC in cooperation with the ILO as a condition of business with suppliers, contractors and other business partners.

Case example 12:

Harassment and discrimination in provision of services (Hong Kong, China)

The Plaintiff was a paraplegic. One day, she was in her wheelchair in the street intending to get a taxi, and the Defendant, a taxi driver, had engaged in a series of unwelcome conduct towards the Plaintiff. These included the Defendant's unwillingness to accept the Plaintiff's patronage, refusal to assist the Plaintiff in getting into the taxi and putting her wheelchair into the boot of his taxi, as well as rude and offensive remarks towards the Plaintiff concerning her disability while the Plaintiff was in the taxi.

The Plaintiff brought proceedings against the Defendant under the Disability Discrimination Ordinance (DDO). The Court found that the Defendant's behavior and remarks were not only rude and offensive, but also specifically referred to the Plaintiff being a disabled person, and hence they were clearly "on the ground of" the Plaintiff's disability. It was held that the Defendant's behavior and remarks fell within the meaning of disability harassment as defined in s. 2 (6) of the DDO. Hence, the Defendant had committed an act of disability harassment under s. 38 of the DDO, which stated that it was unlawful for a service provider (i.e. the Defendant in this case) to harass a service recipient with a disability (i.e. the Plaintiff in this case). The Court also found that the Defendant had treated the Plaintiff less favourably on the ground of her disability, hence amounting to direct discrimination under s. 6(a) and s. 26 of the DDO.

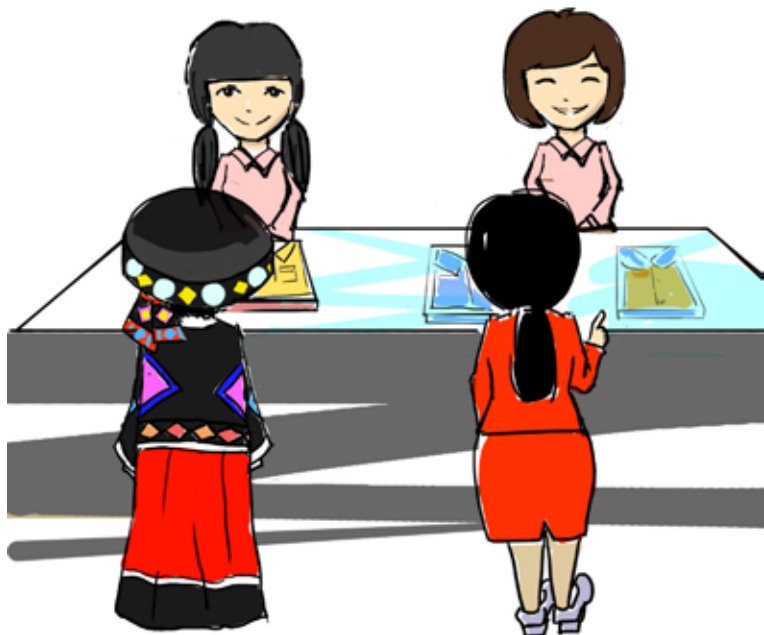
As a result, the Defendant was ordered to give a written apology under s. 72 (4)(b) of the DDO. Besides, the Plaintiff was awarded a total of HK\$20,000 (HK\$15,000 as injury to feelings and HK\$5,000 as punitive damages) for the harassment and discrimination act.

Source: Case Ma Bik Yung v Ko Chuen, DCEO 1/1997, [1999] 2 HKLRD 263, DC. As summarized at Hong Kong Equal Opportunities Commission website, www.eoc.hk.org [7 September 2010].

PART III –MANAGING EQUALITY IN THE WORKPLACE

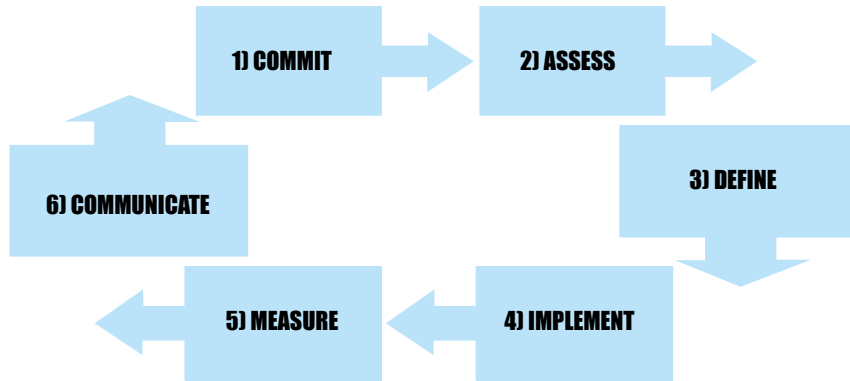
8. Planning and implementing equality measures

Ensuring that all human resource management policies and practices are free from discrimination requires a systematic approach to managing equality in the workplace. Action to review and revise human resource policies, to train staff responsible for recruitment and human resource management, and to incorporate equality in the company culture is best taken as part of a well-planned and structured company equality action plan. The company equality action



plan is often based on an equality policy stating the company’s commitment to equality. The equality action plan includes often a set of activities and affirmative action measures implemented following a staged approach, starting from assessments and defining targets and actions to implementation and measuring the progress made. (See figure 3.)

Figure3: Basic steps of equality management



This Chapter explains the main steps of equality management giving practical guidance to managers on how to implement equality measures at company level.

For an overview of the main steps to integrate non-discrimination in your company human resource practices see Management tips 11: Non-discrimination roadmap below.

Management tips 11:

Non-discrimination roadmap

Identify need for non-discrimination strategy	<ul style="list-style-type: none"> - Link non-discrimination with business priorities - Get top management support for initiatives - Identify business benefits from non-discrimination
Prepare baseline information	<ul style="list-style-type: none"> - Analyze the composition of workforce - Analyze the composition of local labor market - Get information on legislative requirements
Review and change recruitment policies	<ul style="list-style-type: none"> - Move to competence-based systems - Ensure recruitment is not based on personal specifications - Train managers in non-discriminatory recruitment
Assess payment practices	<ul style="list-style-type: none"> - Identify potentially discriminatory practices - Audit payment disparities for women and minority groups

Implement an anti-harassment policy	<ul style="list-style-type: none"> - Define an anti-harassment policy - Communicate the policy to the workforce - Train managers on the policy - Support workers who are harassed
Develop family-friendly policies	<ul style="list-style-type: none"> - Institute maternity leave policies - Encourage flexible working where appropriate - Consider the possibility of providing crèches - Consider ways to accommodate breastfeeding mothers
Understand cultural and religious diversity	<ul style="list-style-type: none"> - Know the cultural boundaries in the society in which you operate - Train and develop managers to understand cultural differences - Adjust workplace practices to facilitate religious cultural practices where possible
Involve underrepresented groups in your workforce	<ul style="list-style-type: none"> - Check your recruitment requirements: are they absolutely necessary? - Consider ways of providing training to potential employees to improve their chances of employment - Consider whether you can work with government, workers' organizations and other stakeholders to develop the potential of underrepresented groups
Devise a strategy to deal with disability and health issues	<ul style="list-style-type: none"> - Examine ways in which jobs can be readjusted to accommodate persons with disabilities - Have a health management system which seeks to rehabilitate or reintegrate employees who have long-term health problems - Develop a policy on HIV/AIDS
Communicate	<ul style="list-style-type: none"> - Ensure your managers and workforce know the standards of behavior expected of them and are aware of company policies - Let marginalized communities know about your programs - Accentuate the positive advantages of non-discrimination with all stakeholders

Source: International Finance Corporation: Good practice note: Non-discrimination and equal opportunity, No.5 (January 2006).

8.1 Commit to equality, adopt an equality policy

Employers who take equality seriously should adopt an equality policy to formally commit to the principle of equality of opportunity and treatment in their company human resource practices. Just as any other major company policy, the equality policy should be carefully prepared and approved by the company Board. Strong senior management support is essential to the success of the equality policy implementation. After adoption the policy should be displayed and circulated in the workplace. Many successful companies choose to also incorporate their commitment to equal employment in their mission and core values.



The equality policy should be prepared carefully and in consultation with the workers' organizations or other employee representatives. The nature of the equality policy and its manner of implementation vary from company to company, for example depending on the size and operational requirements of the enterprise. Smaller firms, for example, may require a lesser degree of formality. There are, however, common elements that should appear in all equality policies.

Guidelines for preparing an equality policy:

- Issue the policy in written form.
- State the company's commitment to equality in all its human resource policies and practices. Confirm that no discrimination or harassment will be tolerated in the company.
- Define the grounds of discrimination covered by the policy. Ensure that at least the grounds covered in the law are included, and add more as applicable.
- Publishing the policy through company notice boards, staff newsletters, employee handbooks, e-mail and the like so that staff knows that the policy is in place.
- Define the coverage of the policy by listing the recruitment and employment decisions to

which the equality principle will be applied.

- State explicitly the commitment of the Company Board and senior management to the equality policy. Have the policy signed by the Board or the Chief Executive Officer of the company.
- Assign a member of the senior management the responsibility for putting the policy into practice and for monitoring progress.
- Appoint an equality coordinator to coordinate implementation of the policy.
- Provide for continuing training of managers, supervisors and the staff on equality.
- Provide for conducting an equality audit in the company to review the existing human resource policies and practices and to document the current staff demographics in different types of jobs in the company.
- Give a brief outline on how the policy is to be implemented and its objectives. Provide for preparation of an action plan to define the concrete actions and affirmative action measures to be taken.
- Outline how the effectiveness of the policy will be monitored.
- Include a description of how discrimination related problems and complaints are handled in the workplace. The procedure for grievance handling can also be adopted in a separate document.

Consultation with employees and workers' organizations

Equality policy should be developed in consultation with the workers' organization or other employee representatives. The objectives of the policy can only be achieved if employees accept introduction of the policy and support its effective implementation. The consultations of employees and the workers' organization should be initiated at the early stage of policy formulation and continued throughout the process.

Commitment from the Board and senior management

The equality policy should be approved by the Company Board and signed by the Chief Executive Officer (CEO). The support from the CEO and senior management is one of the most critical factors that contribute to the successful implementation of equality measures in the company. It is important for CEOs to lead by example and involve the senior management team in the implementation of fair employment practices.

To strengthen the responsibility of the senior management on equality, personal accountability for meeting the objectives can be established. In many leading companies, managers and supervisors are held accountable for their personal behavior as well as meeting fair employment objectives, such as developing and mentoring women leaders or employing older workers.

Management tips 12:

Sample equal opportunity policy

Below is a sample equal opportunity policy for SMEs developed by Hong Kong Equal Opportunities Commission. The Equal Opportunities Commission encourages companies to adapt the policy to their specific company needs, adopt it, and endorse it with the company seal.

Sample equal opportunity policy

_____ [add company name] _____ is an equal opportunity employer. This means we make sure that every job applicant and employee has equal employment opportunities. You will not be disadvantaged because of your sex, pregnancy, disability, race, marital status or family status _____ [add any other characteristics you would like to include] _____ during your employment or when applying for a job with us. What matters to us is that you are the best person for the job and that you do a good job. At _____ [insert company name] _____ we believe that everyone has the right to work in an environment free of discrimination, harassment, vilification, and victimization. We will not tolerate such behavior under any circumstances.

Discrimination

We will not tolerate direct or indirect discrimination based on sex, pregnancy, disability, race, marital status or family status or _____ [add any other grounds] _____.

Direct discrimination is when you are treated less favourably because of your sex, disability or other protected characteristic previously mentioned. For example, it would be direct discrimination for a supervisor to refuse you training because you were pregnant.

Indirect discrimination is when you are treated the same way as everyone else but you do not or cannot comply with a rule, condition or requirement of employment that applies to everyone because of your sex, pregnancy, disability, marital status or family status, and a higher proportion of people who do not have that characteristic do or can comply with it, and there is no valid reason for the rule or requirement. (For example, a policy of only hiring people who were able to relocate at short notice may disadvantage people whose family responsibilities (e.g. persons with young children) prevent them from speedy relocation.) However, it would not be indirect discrimination if we, as your employer, can give a valid reason for such a requirement.

Harassment

We will not tolerate sexual harassment, disability harassment, racial harassment or _____ [add harassment on any other characteristics you would like to include] _____. Harassment is behavior that is not welcome, not asked for and not returned, and which is likely to cause an uncomfortable workplace by humiliating, seriously embarrassing, offending or intimidating someone. All employees are responsible for their own actions and should not engage in potentially offensive behavior. It is not necessary for the person being harassed to have to tell you that they were humiliated or offended by the behavior.

Vilification

Vilification of an employee because of their disability is unacceptable in this workplace. Vilification is any activity in public that incites hatred, serious ridicule or contempt of a person because of their disability. Where such behavior includes threats of harm or property damage, it may constitute serious vilification, which is a criminal offence.

Victimization

We won't disadvantage you for complaining about unlawful conduct in this workplace or for helping someone else to do so. We take reports of discrimination, harassment, vilification and victimization very seriously and will handle such complaints as quickly, confidentially and fairly as possible.

Who this policy covers

This policy covers management, supervisors, all employees, including those on commission, casual and contract staff. It also covers customers and anyone else to whom we provide goods, services or facilities.

What this policy covers

This policy covers:

- advertising for job vacancies
- recruitment
- training and development opportunities
- work allocation
- shifts, rosters, hours of work and overtime
- salary levels and packages
- leave arrangements
- pregnancy arrangements and associated leave
- performance assessment
- disciplinary procedures
- restructuring
- dismissal, redundancy and termination of employment
- provision of goods, services and facilities

Resolving problems

If you feel you are being unlawfully discriminated against, harassed, vilified or victimized, we would like you to tell us as soon as possible so we can resolve the issue or problem at the earliest opportunity.

We have a procedure for handling EO related problems. We won't victimize you for speaking out and will not allow any employee of this company to do so. Employees found to have engaged in unlawful behavior may be disciplined and, in serious cases, dismissed.

_____ Date _____

Signature of business operator / company seal

Source: Adapted from Hong Kong Equal Opportunities Commission: Equal opportunity essentials kit for SMEs (Hong Kong).

8.2 Conduct an equality audit

Review of policies and practices

The first step for every employer committed to promoting equality is to review the company human resource management policies and practices. All existing policies, practices and procedures on recruitment, performance appraisal, training, promotion, pay and bonuses etc. should be reviewed and

needs for amendments identified. The review of human resource management policies and practices should be conducted in consultation with workers' organizations or other employee representatives.

Identifying hidden barriers through workforce assessment

Reviewing policies and practices at face value is not enough to identify all barriers to equality in the company human resource management practices. Most barriers to equal opportunity and treatment are hidden, and they can only be identified by analyzing the actual makeup of the company workforce. Employers should carry out a workforce assessment to analyze statistical data on who is in the company's workforce, in terms of e.g. sex, age, ethnicity, disability etc. This analysis can help in identifying those policies or practices that (intentionally or unintentionally) create invisible or institutional divisions among the workforce.

The manner in which the workforce assessment is carried out and the degree of formality needed will vary with the size of the organization. In a small organization with a simple structure an informal review to assess the distribution and payment of employees may be enough. In a larger and more complex organization, a more formal analysis may be required. Workers' organizations or other employee representatives should always be involved in planning and execution of the workforce assessment.

Guidelines for analyzing the data from a workforce assessment:

- Assess the staff composition in terms of sex, ethnicity etc. in different kinds of jobs in the company, for example in each major grouping within the organization (e.g. managerial, clerical, skilled or unskilled employees), each occupational group (e.g. engineering, process work) and type of employment (e.g. permanent, temporary, full or part-time).

- Look at what kinds of persons apply to work in your company, who you interview and who gets recruited in your company.

- Establish what the pay levels for different groups of employees are in



your company.

- Compare performance ratings of different employee groups in the company.
- Monitor who applies for training opportunities in your company, and who is provided with training and in what work areas.
- Monitor what kinds of persons apply for promotion in your company, and who gets promoted.
- Analyze the lines of progression, i.e. the order of jobs employees pass through in the process of promotion. Establish the levels at which members of different groups of employees are working to identify possible barriers to employment promotion. Analyze whether some staff members are in positions where they cannot make full use of their skills and talents.
- Analyze who takes on grievances in your company, and for what reason.
- Analyze who is absent or sick, and for what reason.
- Analyze who you dismiss and who leaves the company, and for what reasons.

When analyzing the data look at significant differences between groups of workers (e.g. women, men, ethnic minority employees) and identify trends over the periods of time. When significant differences are found, the reasons for them should be analyzed. The findings of the workforce assessment will form the basis of defining the affirmative action measures to be taken in the company as part of its equality action plan.

In most cases, the workforce assessment requires collection of personal information, such as marital status, ethnicity, or age, from employees for analytical purposes. It is important to explain to employees that data is collected solely for the purposes of identifying areas for improvement in the company human resource practices and detecting needs for adoption of equality measures in the company. Employees should be ensured that their personal data will be handled confidentially. In any case, provision of personal information should always be voluntary.

Pay equity audit (objective job evaluation)

Pay equity audits are carried out to assess whether salary levels for different jobs in the organization are determined at fair and equal level. The pay equity audit focuses on assessing the value of different jobs, by comparing knowledge, effort, responsibility and working conditions of different jobs.

See Section 5.1 Pay and benefits for introduction to “equal pay for work of equal value” principle.

Comparing the value of jobs should be done through a planned and structured process free from any discriminatory bias. Most often companies appoint a committee to plan and carry out the pay

equity audit process. Both managers and employee or workers' organization representatives should be represented in the committee. The common steps of carrying out the audit include:

1. Identify jobs to be compared. E.g. to detect gender pay gap select some women-dominated jobs and some male-dominated jobs for comparison.
2. Choose a job evaluation method.
3. Develop tools for data collection, and gather data on the jobs to be compared.
4. Analyze the questionnaire results.
5. Determine value of jobs by assessing the skills, effort, responsibility and working conditions of these jobs.
6. Estimate wage gaps between jobs of equal value.
7. Make pay adjustments so as to achieve equal pay.

Guidelines for conducting a pay equity audit

- Ensure that managers and employees are equally represented in the pay equity audit committee. Minimum one representative of each job chosen for comparison should be invited to join the committee.
- Equal representation of women and men in the committee should also be ensured. If the comparison is about detecting pay differences between local and rural migrant employees both groups should be equally represented.
- Ensure that pay equity audit committee has been properly trained on pay equity before starting the audit process.
- Allow employees possibility to give their inputs and comments at every stage of the audit process.
- Ensure that the criteria used for assessing the value of the jobs are free from bias. Ensure that different types of skills, efforts, responsibilities and working conditions are all given attention and valued in an unbiased way
- Weigh the different criteria based on their relative importance.
- Take the basic salary, flexible pay (e.g. seniority increments, performance pay) and any cash-value benefits into account when comparing the pay levels for different jobs.

Note that if you find out that the pay for two jobs of equal value for two employees with the same seniority and same performance ratings is different, you have identified a pay gap.

Management tips 13:

Sample Job Comparison Sheet

Instructions: Score Job A and Job B 1-5 points for each criteria.

Criteria	Job A	Job B
1. Skill		
1.1 Knowledge & education level	_____	_____
1.2 Experience	_____	_____
1.3 Initiative and ingenuity	_____	_____
2. Effort		
2.1 Physical demand	_____	_____
2.2 Mental or visual demand	_____	_____
3. Responsibility		
3.1 Responsibility for equipment or process	_____	_____
3.2 Responsibility for material or product	_____	_____
3.3 Responsibility for safety of others	_____	_____
3.4 Responsibility for work of others	_____	_____
4. Working conditions		
4.1 Working conditions, and hazards	_____	_____
4.2 Complexity of duties	_____	_____
4.3 Importance of not making errors	_____	_____
4.4 Contact with others	_____	_____
4.4 Ability to work with confidential data	_____	_____
Total Points	_____	_____

Source: United Electrical, Radio and Machine Workers of America: UE Information for workers: Bargaining for pay equity.

8.3 Define an equality action plan

The equality policy adopted by the company needs to be backed up by concrete action to review and change company policies and practices. In order to ensure successful implementation of equality measures, it is best to formulate an action plan clearly defining the objectives, steps and timeline for implementation.

The company equality objectives should be defined on the basis of the needs and challenges identified in the equality audit. Workers' organization or other employee representatives should be consulted on setting the objectives and on selection of steps to achieve the objectives. Special affirmative action measures could be defined to tackle the challenges identified in the workforce assessment.

Equality action plan

The action plan should:

1. Describe the immediate objectives in specific terms.

2. Define the concrete steps and actions needed to achieve the objective.

3. Assign clear responsibility for achieving the objective.

4. Set a realistic target date.

5. Establish a procedure for evaluating the action taken.

Some examples of action plan measures could include:



Objective 1: Ensure that all recruitment policies and practices are free from discrimination

Steps: Review all recruitment policies and procedures (including job application forms etc.), and remove any discriminatory elements in them. Train all staff involved in recruitment processes on non-discriminatory short listing and interviewing practices. Write objective job descriptions and competency statements for all jobs.

Responsibility: Senior manager responsible for equality. Human resource department to carry out the review and to coordinate the training activities.

Target date: Within 3 months

Evaluation: Human resource department to monitor implementation of the activities, and to evaluate the impact on actual recruitment outcomes.

Objective 2: Eliminate all forms of harassment in the workplace

Steps: Develop, publicize and put in practice a company policy on sexual and discriminatory harassment and establish a procedure for handling related complaints. Train all staff and managers on the policy and use of the complaints procedure.

Responsibility: Senior manager responsible for equality, human resource department

Target date: Within 6 months

Evaluation: Human resource department to monitor the use of the complaints procedure.

Affirmative action measures (positive action)

Affirmative action measures are special temporary measures to redress the effects of past or continuing discrimination in order to establish equality of opportunity and treatment between different

groups of employees in the company. These measures target a particular group of employees or job applicants (such as women or men, workers with disabilities, ethnic workers, or older workers) that are underrepresented in the company or in certain kinds of positions in the company. Affirmative action measures are important in fighting job segregation (horizontal or vertical) based on bias, attitudes or stereotyped ideas about “what kind of work is suitable for what kind of person”.

Companies should use the results of the equality audit to determine what kind of positive measures are needed in the company to even out unequal representation of different groups of employees in different types of jobs. Some examples of affirmative action measures include:

- special recruitment programmes
- special career development courses
- upward mobility programmes
- goals, targets or quotas

The affirmative action measures should be included in the company equality action plan, and clear objectives, steps, responsibility, timeframe and methods for monitoring effectiveness should be defined for each measure. For example:

Objective 3: Increase recruitment of ethnic minority applicants gradually by 10%.

Steps: Include a special notice in the job advertisements to encourage ethnic minority persons to apply. Place the advertisements in ethnic minority newspapers and community centers. Train all staff involved in recruitment on equality.

Responsibility: Senior manager responsible for equality, human resource department

Target date: Within 12 months

Evaluation: Human resource department to monitor the ethnicity of new recruits.

Objective 4: Increase proportion of women in senior management positions up to 30%.

Steps: Advertise all opportunities for training and promotion openly and encourage women to apply. Ensure that training courses are organized so that women with family responsibilities can also attend. Provide individual career counseling to well-performing women with leadership potential.

Responsibility: Within 3 years.

Target date: Senior manager responsible for equality, human resource department

Evaluation: Human resource department to monitor the sex of persons promoted.

Management tips 14:

Examples of special equality measures adopted at company level

The following are examples of strategies used in successful equality programmes in New Zealand.

Recruitment

- Develop specific recruitment programmes for occupations where, for example, women and members of ethnic groups are under-represented. Recruiting efforts might involve communication with relevant networks and the use of the ethnic press and radio etc.
- Develop mature-age entry programmes and generally facilitate workforce re-entry through retraining programmes and the like
- Liaise with relevant groups to determine strategies for increasing their representation, e.g. with ethnic minorities or workers with disabilities, either in the enterprise or the community
- Liaise regularly with educational institutions to facilitate the recruitment of technically and professionally qualified members of minority groups
- Review company job advertisements and career information materials to eliminate any existing bias in content, language and pictures
- Periodically review recruitment strategies for any remaining bias
- Developing training courses in selection techniques where possible sources of discrimination are described and discussed

Training and staff development

- Establish appropriate career development courses
- Extend training activities to provide courses in necessary basic skills such as the local language, letter writing and basic office administration skills. Course access should not be limited to people already in positions requiring the use of these skills
- Provide induction courses for all employees, including, where relevant, for specific groups of employees
- Provide for individual career counseling and ensure that all employees are told about this service
- Identify training needs for designated groups in consultation with the group of workers directly concerned
- Encourage members of particular groups to apply for and to enroll in both external and internal training programmes, and review course nomination procedures
- Introduce periodic equality orientation courses for all staff, to provide information on equality and to promote continuing awareness of the need for equality promotion
- Examine existing training materials for bias. Develop new training material for use in equality orientation courses and in equality segments in other training courses
- Incorporate an equality segment into relevant training courses, such as public relations, supervisor development, effective management skills, interpersonal relations and organizational effectiveness courses

Promotion and career opportunities

- Develop upward mobility programmes for low-level employees so that they have the opportunity to gain skills which will enable them to compete for higher-level positions, for example, through "bridging" positions

- Break down occupational stereotyping. Not only men, for example, are engineers nor women early childhood educators
- Implement job redesign and job rotation programmes
- Compile registers and/or personnel skills inventories using objective criteria so that managers become more aware of who is available for management and top-level jobs
- Ensure that relevant merit is always the basic criterion for any appointment or promotion, and team diversity and affirmative action measures are taken adequately into consideration.

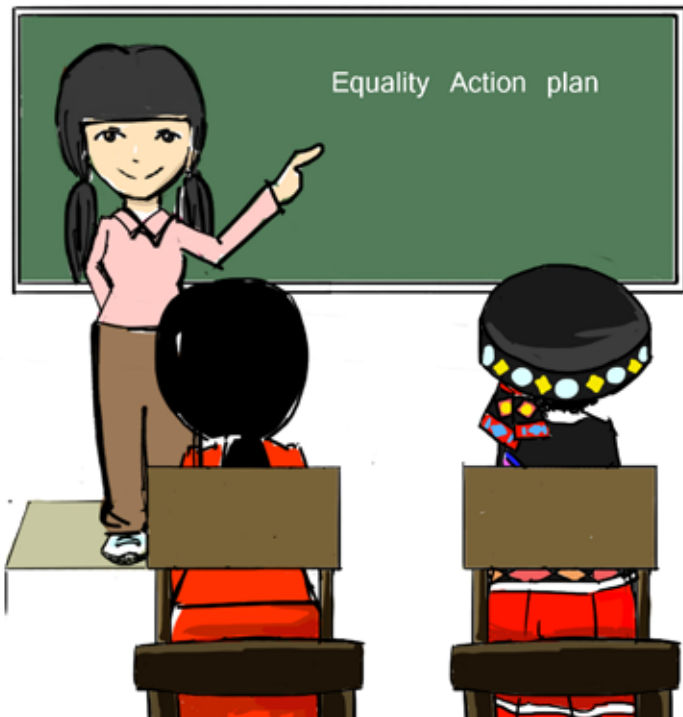
Source: New Zealand Employers' Federation: A guide for employers on Discrimination in Employment (Wellington, 1993).

8.4 Implement the equality policy and action plan

Internal communication

The equality policy and action plan are only effective if they are made known to all staff and managers. Staff and managers should know what is and is not acceptable behavior or practice in the workplace, and what their rights and responsibilities are. To ensure that the equality policy is effectively communicated to all employees, information on the equality policy should be included in the dossiers given to all new employees and regular updates on the policy implementation should be provided to all staff. Some recommended avenues for communicating equality practices internally include:

- CEO speeches and messages;
- employee handbook, HR circulars, staff newsletter and company intranet;
- information flyers, handouts, brochures and other PR materials announcing the equality policy and showcasing success stories;



- posters highlighting equality of opportunity and treatment as the core value of the company;
- briefing sessions on the policy during staff meetings, company events or training workshops.

Employers should ensure that employees have a possibility to communicate their views, ideas and concerns on the implementation of equality measures in the company. This two-way communication can be organized through formal mechanisms (e.g. suggestion box) or informal discussions. When necessary, the communications by employees should be kept confidential. Implementation of equality measures in the company should be carried out in consultation with workers' organizations or other employee representatives.

Equality training

Training managers, supervisors and staff involved in making recruitment and employment decisions on equality is pivotal for success of any equality policy. Only if managers know how to ensure equality in every human resource management related decision they make can discrimination be eliminated in the company practices. Training should focus on providing managers with practical skills and tools for carrying out a fair recruitment process and managing a diverse work team. Managers should also be advised on how to develop the potential of team members while harnessing the differences that each team member brings. Equality training provided to all staff and managers can also help change the way staff and managers perceive differences, encouraging them to see diversity as a source of corporate strength.

Appointing an equality coordinator

Employers should appoint an equality coordinator to coordinate implementation of the equality policy and action plan. Depending on the needs of the company, a full-time equality coordinator post can be established, or the responsibility for equality coordination can be made a part of the duties of an existing employee. Most often the equality coordinator is somebody in the company human resource department.

The equality coordinator should report directly to the senior manager responsible for equality. The main task of the coordinator is to ensure that the steps defined in the equality action plan are implemented within the agreed timeframe to realize the objectives set in the policy and the action plan.

The coordinator should take an active role in facilitating change in the company through engaging employees and manager at all levels, and creating awareness on the importance of equality. He or she should also provide practical advice and assistance to line managers in ensuring that equal human resource practices are applied at all levels. The coordinator should also be the first contact point for employees who feel that they have been discriminated or harassed at the workplace.

Management tips 15:

Remember the role of middle managers

The successful implementation of fair employment practices imposed by the top management requires positive involvement and support of middle managers and supervisors. Middle managers can either serve as a catalyst for change in the adoption of fair employment practice or may hinder the organization's commitment to equality of opportunity and treatment.

It is important for organizations to ensure that middle managers understand the rationale for merit based employment practices and affirmative action, and their role in the implementation of these practices. In addition, middle managers need to be aware of the benefits of fair employment practices and how they will impact the performance of employees within the organization. They are in the position to understand the concerns of employees and communicating these concerns to the senior management. Middle managers also play a vital role in explaining fair employment initiatives implemented by the organization.

How can organizations involve middle managers in the implementation of fair employment practices?

1. Communicate to middle managers what fair employment practices are, and the benefits gained through implementation of such practices.
2. Help them understand their own role in the implementation of such practices.
3. Provide the necessary expertise and competency e.g. through training opportunities on how to hire on merit
4. Provide the appropriate tools, recruitment guides on fair hiring and other HR policies
5. Help them to be conscious of their own bias and stereotypes, and encourage them to be open and receptive to new ideas and ways of doing things.
6. Hold them accountable for and provide rewards for the successful implementation of fair employment measures and outcomes. Where possible, share and showcase successful case studies with employees.

Source: Singapore Tripartite Centre for Fair Employment: Fair Employment. Leading Fair Employment Practices Handbook (Singapore,).

8.5 Monitor the equality policy and action plan

Policy review

It is recommended that the equality policy be monitored regularly, preferably annually, to ensure that it is working in practice and that the actions taken to promote equality are successful. The review should be planned and implemented by a joint committee consisting of management and workers' organization or other employee representatives. Soliciting feedback from employees on the functioning and impact of the equality policy and action plan is a crucial part of monitoring progress.

The degree of formality needed will vary with the size of the organization. In a small organization an informal review to the functioning and the impacts of the policy and action plan may be enough. In a larger and more complex organization, a more formal analysis may be required.

Data collection and records

With regards to collecting data on the existing workforce of the company, the methodology used of carrying out the workforce assessment before the design of the action plan can be applied also for monitoring purposes. See Section 8.2 Conduct an equality audit.

Employers should keep records on all employees and all employment decisions made. Well-maintained up-to-date records include a wealth of information useful for monitoring the equality policy and action plan, and save the employer from collecting the data every time the periodic review is due. While giving personal information must always be voluntary, the employers should make sure that employees and job applicants understand the purpose for collecting the information and the importance of monitoring. Personal data collected from employees and job applicants shall be kept confidential.

Data analysis and outcomes

The data analysis should focus on identifying any impact of the equality measures and affirmative action implemented in the companies. This should be done by reviewing any changes in the company staff composition in different jobs and at different levels. Same method of data analysis can be used as when conducting the workforce assessment. See Section 8.2 Conduct an equality audit.

- If the workforce assessment shows clear impacts (i.e. disappearance or reduction of the disparities), the equality policy and action plan have been successful. The need for continuing the existing positive measures should be assessed, and unnecessary measures should be removed.
- If no impact can be identified, the equality policy and action plan are not effective. The employers and workers should work together to design new, more effective measures to promote equality.
- The monitoring results should also be used to identify new areas for equality promotion. Clear objectives, steps, responsibility, timeframe and monitoring arrangements should be defined for these measures, and they should be made part of the company equality action plan.

Continuous improvement

The results and outcomes of the monitoring should be used to formulate a next round of equality measures in the company. Keeping the company free from non-discrimination requires continuous commitment to equality promotion. Without proper attention even already eradicated discriminatory practices may reappear. For this reason true commitment equality requires commitment to a cycle of continuous improvement. See Section 2.2 Basics of equality management.

8.6 Communicate your progress

It is useful for companies to inform their stakeholders and the general public about their equality practices and the achievements made through implementation of the equality policy and action plan.

Communicating the commitment to equality will also help in strengthening the company brand image, which can help the company in attracting talent to the company and building new customer base.

9. Dealing with discrimination related complaints

Employers should set up a procedure for dealing with employee grievances and complaints of discrimination. A well-functioning internal procedure for grievance handling allows swift and flexible handling of the complaints, and as such can play an essential part in cultivating good worker-management relations. Discrimination related problems are best solved through practical amendments in policies or practices at the workplace level. It should also be remembered that disregarding employees' complaints until they lodge a lawsuit in the People's Courts or take collective action at the workplace is risky for the company, as letting the problem go public is likely to cause the company bad publicity.

Guidelines for developing a grievance procedure:

- Prepare the grievance procedure in written form. It can be prepared separately or as part of the equality policy.



- State the company's commitment to resolving any discrimination related grievance in fair, confidential, efficient and thorough manner.
- Commit to carrying proper investigations in each case and handling all grievances seriously.
- Ensure confidentiality of the procedure.
- Guarantee that both the complainant and respondent will be treated fairly. Both sides should be allowed to clarify and explain their position to avoid misunderstanding.
- Prohibit victimization and penalizing of the employee bringing the grievance.
- Define the steps for bringing a complaint on discrimination. The steps should be simple and accessible to all employees.
- The complainant should be able to choose between an informal procedure and a formal company investigation to solve the issue. It is a good practice to define clear procedures for both approaches.
- Define the time frame for handling the case and giving a resolution.
- Provide for resolving the matter at the lowest possible level of the organization.
- Provide for an avenue to bring the grievance up to the next level of management if the employee is not satisfied with the settlement.
- State that both sides of the dispute should act in good faith and collaborate to reach a settlement.

The procedure should be made known to all employees, and line managers should be trained on dealing with complaints in accordance with the procedure. The employers should also make sure that line managers and supervisors understand the importance of the grievance process and their personal role in maintaining harmony in the workplace amongst all employees.

The senior manager responsible for equality should be made accountable for ensuring the procedure is followed. The equality coordinator should monitor the use of procedure regularly, and take note of the outcomes of the procedures.

Management tips 16:

Sample procedure for handling equality related grievances

Below is a sample procedure for handling equality related problems and grievances for SMEs developed by Hong Kong Equal Opportunities Commission. The Equal Opportunities Commission encourages companies to adapt the procedure to their specific company needs, adopt it, and endorse

it with the company seal.

Sample procedure for handling equality related grievances

This procedure explains what to do if you have equality related problem, issue or complaint.

At _____ [company name] _____ we understand that it may be hard for you to work to your full capacity if you are being treated unfairly or harassed at work. That is why we support equal opportunity in this workplace. You can obtain a copy of our equality policy from _____ (say where) _____.

_____ [Add name of person responsible for equality] _____ is responsible for making sure this procedure is followed and reviewed as necessary. If you bring a problem to us it will be handled confidentially, impartially and speedily.

What to do if you have a problem

We have outlined the procedure for handling problems in steps. Not all of these may apply to you, or you may follow them in a different order than shown here. You can seek help from the Equal Opportunities Commission at any time, though we recommend that you try to resolve the issue at work first, if possible.

Step 1: Talk to the person/people involved

If you can, it's best to try and resolve issues yourself and to do so as soon as possible after the incident. We understand that you may not always feel comfortable doing so, particularly if you have a problem with a supervisor.

Step 2: Talk to the person responsible for equality

If you would like to talk over an issue or find out what your rights are, make time to talk to our company's equality representative _____ [insert name and contact details] _____. They will meet with you as soon as possible. In general they will not discuss your problem with anyone else without your permission. The only exception to this is if you tell them something that may affect someone's safety.

Depending on what you decide and after taking details from you, the equality representative will approach the other person(s) involved in the issue as soon as possible (and preferably within two workdays of meeting with you) and obtain their side of the story.

We strongly encourage timely complaint resolution. Within _____ [time frame] _____ after speaking to the other person(s), and _____ [time frame] _____ from the date you first approached

them, the equality representative will speak to witnesses if they need further information. Witnesses may include people who didn't actually see what happened, but who observed your reaction or other related behavior.

The equality representative will then decide if they have enough information to know whether your allegation happened (using the standard of proof that it is more likely than not to have happened). They will also work out whether disciplinary action is required.

Where allegations are proved, the equality representative (or your manager) will resolve the problem by:

- bringing everyone together for a meeting to reach an agreement/resolve issues if the allegation is not of a serious nature
- taking appropriate disciplinary action (such as requiring an apology, counseling, an official warning, transfer, demotion, loss of promotion rights for a set period) against the person(s) responsible if the allegation is serious.

They may also arrange training on equality issues for all staff to ensure that everyone knows what is and isn't acceptable workplace behavior.

Step 3: Contact the labour department hotline, workers' organization or a legal aid centre

If you are unsatisfied with the decision reached under this procedure, or you do not feel comfortable bringing it to our attention, you can contact labour department hotline, workers' organization or a legal aid centre to get further advice.

How will our company handle your problem?

We will handle your problem:

- Confidentially -- Only those directly involved in your issue or complaint (including anyone helping to sort it out) will have access to information about it. Information about the problem will only go on an employee's file if they are disciplined in relation to it.
- Impartially -- Everyone involved in the issue will get the chance to tell their side of the story, and will be treated as fairly as possible. The person handling the issue or complaint will not make a decision or take any action until all relevant information has been gathered.
- Speedily -- We will handle all issues or complaints as quickly as possible. Where possible, we will try to resolve all issues within ____ [time limit] ____.

We will not tolerate Victimization -- Less favourable treatment or disadvantage of anyone involved in an issue or complaint being handled under this procedure will be disciplined. Malicious use of this procedure (for example, to lie about someone) will also be disciplined. We will not take

any action without proof. We will investigate all issues before making a decision and/or taking action. We will only take action if we believe that it is more likely than not that the allegations happened.

----- Date

Signature of business operator / company chop

Source: Adapted from Hong Kong Equal Opportunities Commission: Equal opportunity essentials kit for SMEs (Hong Kong).

PART IV –EXTERNAL SUPPORT RESOURCES FOR EQUALITY MANAGEMENT AT COMPANIES

10. Employers' organizations

Access to advice and support from external support organizations and business networks was identified as a key to successful implementation of equality practices in companies, especially in SMEs, by two studies conducted by European Commission in 2005 and 2008. Due to their ability to bring businesses together to share their experiences and good practices in implementing equality measures, employers' organizations play an important role in realizing the business case for equality in companies.

Also in China employers' organizations and industry associations are in a key position to promote equality in their member companies. Employers' organizations should play an active role, and provide their member companies services tailored to their needs.

Guidelines for action by employers' organizations

1. Information and advice:
 - provide member companies information on national and local labour legislation, international labour standards and other guidelines (such as internal buyers' compliance benchmarks)
 - offer guidance on good human resource management practices, such as non-discriminatory

recruitment procedures

- document good practice examples among member companies and share these from enterprise to enterprise

- assist member companies in formulating and implementing equality policies and programmes

- advice member companies on resources for seeking further advice and guidance

2. Programmes and networking

- develop and deliver training and capacity building programmes to members on fair employment practices

- design and implement technical assistance programmes to provide practical coaching to member companies on how to develop their human resource management systems

- work with workers' organizations and participate in tripartite cooperation to promote equality, or join multi-stakeholder initiatives e.g. in the framework of UN Global Compact or national initiatives

- organize regular networking and sharing sessions on key areas related to fair employment practices

3. Lobbying, facilitating dialogue and raising awareness

- raise awareness among member companies about the business case for equality

- engage with government, workers' organizations and other relevant actors, e.g. mass organizations, to influence the national policy on non-discrimination and identify further measures to promote equality

- engage with workers' organizations and NGOs to implement campaigns and raise public awareness about equality

Organizing regular networking and sharing sessions on issues related to good human resource management practices and fair employment are a key strategy in promoting equality in enterprises.



These semi-informal gatherings, e.g. “human resource managers clubs”, can serve as a platform to sharing best practices among member companies. Through sharing, networking, and benchmarking organizations can learn from each others and adapt practices to stay competitive.

Useful links

- China Enterprise Confederation (CEC), www.cec-ceda.org.cn
- All-China Federation of Trade Unions (ACFTU), www.acftu.org.cn
- Ministry of Human Resources and Social Security (MOHRSS), www.mohrss.gov.cn

11. Mass organizations, state authorities and civil society groups

Mass organizations and state authorities

Mass organizations and state authorities such as All China Women’s Federation (ACWF), China Disabled Persons’ Federation (CDPF) and State Ethnic Affairs Commission (SEAC) can advice employers on equality issues and good practices in their respective fields. For example:

- ACWF can provide employers advice on practical measures to ensure health of pregnant women and nursing mother in the workplace.

- CDPF can advice employers on the quotas set for employment of disabled workers in enterprises and on practical measures to accommodate the needs of workers with disabilities in the workplace. CDPF can also advice employers on how to apply for financial support to cover the costs of accommodating the disabled worker from the



Employment Security Fund for Disabled Persons.

Civil society groups

Local civil society groups, such as support groups for persons with disabilities, migrants' rights groups and support groups for HBV carriers can be useful sources of information and guidance for employers.

- Support groups for HBV carriers can provide updated information on national and local legislation on employment of HBV positive persons, and provide accurate information on the character of the disease to reduce uncertainty and misunderstandings.

Also community groups and religious associations can help in finding practical solutions to situations arising in the workplace.

Case example 13:

Practical workplace solutions through mediation by Islamic association (China)

In 2008, a Uighur student from Southwest University for Nationalities participated in a job fair held by a Chengdu computer company. He passed both the written exam and the face-to-face interview. The company was located in Chengdu hi-tech incubation center, which had few restaurants around, so the company was unable to provide a free Moslem lunch. The company refused the Uighur student for the sake of his dietary habits. The student lodged a complaint with his religious association.

The student felt that he had been discriminated against due to his religion, and he approached the Chengdu Islamic Association to ask for help. The Islamic Association helped the student in negotiating with the company, and the two sides reached a very practical low-cost solution to the situation. The company bought a microwave oven and put it in the company canteen. This way the student could bring his own lunch, and warm it up in the canteen. The problem was solved with this easy solution, and the student was hired.

This case is a very good illustration of reasonable accommodation of special religious needs of workers in the workplace. The applicable legal provisions are Article 12 of the Labour Law and Article 28 of the Employment Promotion Law.

Source: W. Zhou: Unpublished training materials (Chengdu, 2009).

Case example 14:

Diversity charters – A new strategy to promote equality in the European Union

In Europe, diversity charters are the latest in the series of voluntary initiatives aimed at encouraging companies to implement and develop diversity policies. A diversity charter consists of a short document signed by a company or a public institution, which outlines the measures it will undertake to promote diversity and equal opportunities in the workplace. Development and signature of diversity charters is promoted by the European Commission.

For example, in Germany the national charter was launched on 13th December 2006 with the support of the Federal Government Commissioner for Migration, Refugees and Integration. The German charter covers 10 fields of discrimination: gender, race, nationality, ethnic origin, religion, philosophy, physical ability, age, sexual orientation and identity. Since its launch the charter has been signed by over 870 organizations employing more than 4.9 million people. Over half of the signatories belong to the private sector; 20% are large corporations. Approximately one out of every five signatories is from the public sector. Nine of Germany's ten largest cities have also joined the charter.

Source: European Commission, Employment, Social Affairs and Equal Opportunities: Diversity charters, available at: <http://ec.europa.eu>, accessed 23 May 2011.

Useful links

- All China Women's Federation (ACWF), www.women.org.cn
- China Disabled Persons' Federation (CDPF), www.cdpf.org.cn
- State Ethnic Affairs Commission (SEAC), www.seac.gov.cn
- Yirenping, www.yirenping.org

12. Learning from overseas experiences

Discrimination and equality are fairly new concepts in China, and for this reason it is useful to learn from the experiences of overseas companies. Useful information sources include websites of overseas employers' organizations, state authorities, civil society organizations and professional networks.

One useful source of information is websites of overseas equal opportunities commissions. Equal opportunities commissions are specialized government agencies responsible for monitoring implementation of anti-discrimination measures. They often also have a mandate to examine complaints of discrimination. Currently, only few specialized agencies have been established in Asia.



Among the few, Equal Opportunities Commission of Hong Kong, China, is an excellent example. Hong Kong Equal Opportunities Commission website includes also a wealth of information and tips for managers in Chinese language.

Case example 15:

Hong Kong Equal Opportunities Commission (Hong Kong, China)

Established in 1996, the Equal Opportunities Commission of Hong Kong, China, works against discrimination on the grounds of sex, marital status, pregnancy, disability and family status. It has investigation and conciliation powers; issues codes of practice and guidelines on equal opportunities; produces research on discrimination; and builds partnerships with enterprises and governmental and non-governmental organizations alike. A major achievement of the Commission has been the reform of the Secondary School Places Allocation (SSPA) system that for a quarter of a century had led to the systematic lowering of the best girls' scores and scaling up of the best boys' scores, and gender quotas that restricted girls' access to the best schools arbitrarily.

The Equal Opportunities Commission (EOC) is an independent body, funded by the Government to implement anti-discrimination legislation in Hong Kong, including the Sex Discrimination Ordinance (SDO), the Family Discrimination Ordinance (FSDO), and the Disability Discrimination Ordinance (DDO). In the field of employment, the SDO protects all workers, including part-time and temporary workers as well as job applicants who are not yet employed. Unlawful acts under the SDO and FSDO include: direct and indirect discrimination on the grounds of sex, pregnancy, marital status, family status, sexual harassment and victimization. There are no specific provisions on equal pay for equal value, but the SDO does prohibit discrimination in pay levels, and can be used for equal work for equal value cases.

Redress mechanisms include facilitating internal company procedures, taking a complaint to the EOC and/or instituting legal proceedings, including grants for legal assistance. When a complaint is taken to the EOC, the Commission starts with investigation, and then moves to conciliation where deemed appropriate. Most complaints under both the SDO and the FSDO relate to employment, in particular pregnancy discrimination and sexual harassment. The success rate of conciliation is relatively high – for instance, conciliation was successful in 71% of sex discrimination cases between 1996 and 2008. Challenges in promoting equal pay for work of equal value include the lack of definitions of value and of legislation on specific job evaluation methods. Especially small and medium-size enterprises find implementation difficult.

Source: Hong Kong Equal Opportunities Commission website www.eoc.org.hk [8 Sep 2010]; ILO: Report of Policy Seminar on Work, Income and Gender Equality in China (Bangkok and Beijing, 2008).

Useful links

- [Hong Kong Equal opportunities Commission, www.eoc.org.hk](http://www.eoc.org.hk) (In Chinese and English)
- [Singapore tripartite Alliance for Fair Employment Practices \(TAFEP\), www.fairemployment.sg](http://www.fairemployment.sg)
- [European Commission, Employment, Social Affairs and Equal Opportunities, The business case for diversity, ec.europa.eu/social](http://ec.europa.eu/social)

13. ILO sources of information

ILO tripartite constituents – governments and employers' and workers' organizations – adopted a Declaration on Fundamental Principles and Rights at Work in 1998. Elimination of discrimination in employment and occupation was included as one of the four fundamental principles and rights covered in this Declaration. Respect for these fundamental principles and rights at work is critical for human dignity and economic development, and in times of crisis they serve to prevent a downward spiral in

labour conditions and build sustainable economies. The position of non-discrimination as one of the corner stones of ILO's work was reaffirmed in 2008 in the Declaration on Social Justice for a Fair Globalization.

ILO publishes reports, guidebooks, good practice case studies and training materials to support ILO constituents in promoting equality and combating discrimination. Many of these materials provide practical guidance on improving human resource management in the workplace. ILO implements also technical cooperation projects supporting its constituents (governments, employers' organizations and workers' organizations) in assisting local enterprises in aligning their practices with the principle of equal opportunity and treatment at work.

Case example 16:

The Equality at Work in China (EAWIC) resource platform and website (China)

The Equality at Work in China online resource platform was set up by the "Support to Promote and Apply ILO Convention No. 111" project implemented by the International Labour Office (ILO) and the Ministry of Human Resource and Social Security (MOHRSS) of China in 2008-2010 with the financial support of the Government of Norway.

The resource platform provides a venue for information sharing and knowledge dissemination on equality and non-discrimination. It provides regular update on the latest news and information around the world, such as improvements in non-discrimination legislation and institutional mechanism, and also collects case studies and good practices on equality promotion. The platform also contains China specific information, including China's non-discrimination legal framework and development in national and local policies to promote equality at work.

As an integral component of the resource platform, the EAWIC Newsletter is published regularly with information on the latest legislative/policy movements in China, case studies, good practices, sample company equality policies and collective agreements, recent research findings.

Source: <http://www.equalityatworkinchina.org> [8 Sep 2010].

Useful links

- Equality at Work in China project knowledge sharing platform, www.equalityatworkinchina.org
- ILO Office for China and Mongolia, www.ilo.org/china
- ILO International training Center (ITC-ILO), www.itcilo.org

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- “Guidelines for application forms design”
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- “Pre-employment medical examinations”
- “Pre-hiring and post-hiring procedures”
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