



Eliminating Discrimination in the Workplace

The following guidance is provided based on international labour standards. It is advisable to consult relevant national labour standards. National employers and workers organizations may also be a good source of information on national law, regulation and collective bargaining agreements pertaining to non-discrimination law and practice.

Discrimination at work includes any "distinction, exclusion or preference ... which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation."¹ Discrimination occurs when a person is treated less favorably than others because of characteristics that are not related to the person's competencies or the inherent requirements of the job.

Enterprises should respect the principle of non-discrimination throughout their operations. Enterprises should make qualifications, skill and experience the basis for the recruitment, placement, training and advancement of their staff at all levels,² and encourage and support suppliers to do likewise.

1 Prohibited bases of discrimination in employment

Bases of discrimination identified and prohibited in various international labour standards include:³

Race and/or colour:

- ➔ Distinctions based on race and/or colour are largely rooted in social and economic factors that do not have any objective basis. They commonly involve discrimination against an ethnic group or indigenous or tribal population.

Sex:

- ➔ Sex discrimination includes distinctions made on the basis of biological characteristics and functions that distinguish men and women; and on the basis of social differences between men and women. Physical distinctions include any job specifications which are not essential to carrying out the prescribed duties, e.g., minimum height or weight requirements which do not impact job performance. Social distinctions include civil status, marital status, family situation and maternity.⁴

Discrimination based on sex also includes sexual harassment. Sexual harassment in employment involves untoward actions that: are justly perceived as a condition of employment or precondition for employment; influence decisions affecting job assignment, opportunities for promotion, etc.; or affect job performance. **Actions which may constitute sexual harassment include:**

- any insults or inappropriate remarks, jokes, insinuations or comments on a person's dress, physique, age, family situation, etc;
- a condescending or paternalistic attitude with sexual implications undermining dignity;
- any unwelcome invitation or request, implicit or explicit, whether or not accompanied by threats;
- any lascivious look or other gesture associated with sexuality; or
- any unnecessary physical contact such as touching, caresses, pinching or assault.

Women are most commonly affected by discrimination based on sex, especially in the case of indirect discrimination (see below).

Religion:

- ➔ Religious discrimination includes distinctions made on the basis of expression of religious beliefs or membership in a religious group. This also includes discrimination against people who do not ascribe to a particular religious belief or are atheists.

Although discrimination on the basis of religious beliefs should not be permitted, there may be legitimate bases for imposing requirements in the workplace which restrict the worker's freedom to practise a particular religion. For instance, a religion may prohibit work on a day different from the day of rest established by law or custom; a religion may require a special type of clothing which may not be compatible with safety equipment; a religion may prescribe diet restrictions or daily routines during work hours which may be difficult for the establishment to fully accommodate; or an employment position may require an oath incompatible with a religious belief or practice. In these cases the worker's right to practise fully his or her faith or belief at the workplace needs to be weighed against the need to meet genuine requirements inherent in the job or operational requirements.

Political opinion:

- ➔ Discrimination based on political opinion includes membership in a political party; expressed political, socio-political, or moral attitudes; or civic commitment. Workers should be protected against discrimination in employment based on activities expressing their political views; but this protection does not extend to politically motivated acts of violence.

National extraction:

- ➔ This includes distinctions made on the basis of a person's place of birth, ancestry or foreign origin; for instance, national or linguistic minorities, nationals who have acquired their citizenship by naturalization, and/or descendants of foreign immigrants. Social origin: Social origin includes social class, socio-occupational category and caste. Social origin may be used to deny certain groups of people access to various categories of jobs or limit them to certain types of activities. Discrimination based on social origin denies the

¹ Discrimination (Employment and Occupation) Convention, 1958 (No. 111), Article 1(b).

² ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (revised 2006), paragraph 22.

³ Discrimination (Employment and Occupation) Convention, 1958 (No. 111), Article 1(a).

⁴ For further details see Maternity Protection Convention, 2000 (No. 183) and Recommendation (No. 191); and Workers with Family Responsibilities Convention, 1981 (No. 156) and Recommendation (No. 165).

victim the possibility to move from one class or social category to another. For instance, in some parts of the world, certain “castes” are considered to be inferior and therefore confined to the most menial jobs.

Age:

➔ Older workers are often liable to encounter difficulties in employment and occupation because of prejudices about their capacities and willingness to learn; a tendency to discount their experiences; and market pressures to hire younger workers who are often cheaper to employ.⁵

Younger workers, under the age of 25, may also face discrimination. Biased treatment against younger workers can take many forms, including over-representation in casual jobs with lower benefits, training opportunities and career prospects; payment of lower entry wages even in low skilled jobs where such a wage differential is difficult to justify on grounds of lower productivity; and longer probation periods and much greater reliance on flexible forms of contract.⁶

HIV/AIDS status:

➔ Persons living with HIV/AIDS often suffer discrimination in the workplace and the community. There should be no discrimination or stigmatization of workers on the basis of real or perceived HIV status. HIV/AIDS screening should not be required of job applicants or persons in employment. HIV infection is not a cause for termination of employment. Persons with HIV-related illnesses should be able to work for as long as medically fit in appropriate conditions.⁷

Disability:

➔ Worldwide, approximately 470 million people of working age have a disability. While many are successfully employed and fully integrated into society, as a group, persons with disabilities often face disproportionate poverty and unemployment. Enterprises should not discriminate against people with disabilities in employment practices; and should take positive steps where feasible to accommodate particular workplace needs that workers with disabilities may have.⁸

⁵ See, Older Workers Recommendation, 1980 (No. 162).

⁶ Equality at work: tackling the challenges. Global report under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work, ILO, Geneva, 2007. See, page 38. Text available at: http://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---webdev/documents/publication/wcms_082607.pdf

⁷ ILO Code of Practice on HIV/AIDS and the World of Work. Text available at: http://www.ilo.org/public/english/protection/trav/aids/code/languages/hiv_a4_e.pdf

⁸ Vocational Rehabilitation and Employment (Disabled Persons) Convention (No. 159) and Recommendation (No. 168); United Nations Convention on the Rights of Persons with Disabilities; text of all three instruments available at: http://www.ilo.org/wcmsp5/groups/public/---ed_emp/---ifp_skills/documents/publication/wcms_103529.pdf

Nationality:

➔ Immigrants lawfully within the territory should be treated no less favorably than nationals concerning wages and benefits, hours of work, overtime, holidays with pay, training, membership of trade unions and enjoyment of the benefits of collective bargaining, accommodation and social security.⁹

Sexual orientation:

➔ Men and women workers may suffer from discrimination if they are known or believed to be lesbian, gay, bisexual or transgender; and may be subjected to verbal, psychological and physical intimidation or violence from other workers.¹⁰ Enterprises are encouraged to eliminate discrimination against workers based on sexual orientation.

Workers with family responsibilities:

➔ Current trends in working time in industrialized, developing and transition economies alike are putting increased pressure on workers with family responsibilities. “Family responsibilities” includes care of children and any other dependents.¹¹ The definition of persons constituting “family” may be a broad one and could be formulated after consultation with the workers concerned or their representatives. Workers who have family responsibilities are often discriminated against in hiring, job assignment, access to training and promotion. Enterprises should avoid discriminating against workers with family responsibilities; and avoid excessively long hours, unpredictable overtime that makes it difficult to plan for care of family members, and work on traditional days of rest, while having regard to the operational needs of the enterprise.

Trade union membership or activities:

➔ All workers have the right to form and join trade unions, and to participate as members or leaders in trade union activities.¹² Enterprises should not discriminate against workers lawfully exercising this right.

Other bases:

➔ Workers should be selected only on the basis of their ability to do the job. Enterprises are encouraged to review their hiring and other employment practices for other potential bases of discrimination which may result in treating some

⁹ Migration for Employment Convention (Revised), 1949 (No. 97), Article 6.

¹⁰ Equality at work: Tackling the challenges, pages 42-43.

¹¹ Equality at work: Tackling the challenges, page 77.

¹² Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), Article 2; Right to Organise and Collective Bargaining Convention, 1949 (No. 98), Article 1.

jobseekers or workers less favorably than others because of characteristics that are not related to the person’s competencies or the inherent requirements of the job.

2 Where discrimination occurs

Discrimination may occur before hiring, on the job or upon leaving. It most often occurs in the following areas:

- recruitment
- remuneration (see under Section IV)
- hours of work and rest
- paid holidays
- maternity protection
- security of tenure
- job assignments
- performance assessment and promotion
- training opportunities
- job prospects
- social security
- occupational safety and health
- termination of employment.¹³

Discrimination does not have to be intentional and often managers and workers in an undertaking are surprised at discriminatory practices they uncover when they start to look for them.

Discriminatory practices can be direct or indirect. Direct discrimination arises when an explicit distinction, preference or exclusion is made on one or more grounds. For example, a job advertisement for “men only” would constitute direct discrimination. Indirect discrimination refers to situations, measures or practices that are apparently neutral but which in fact result in unequal treatment of persons with certain characteristics. The latter type of discrimination, because of its more hidden nature, is the most difficult to tackle. For instance, organizing training courses after work late in the day may exclude workers who may be interested in attending them but cannot do so because of their family responsibilities; those workers who receive less training are likely to be disadvantaged in subsequent job assignments and promotion prospect.

Not all distinctions are discriminatory. For instance, distinctions made on the basis of the skills needed for a certain type of work are allowed; as are special measures of protection or assistance provided by national law, such as the ones concerning health and maternity. Distinctions based on skills or efforts are legitimate; and disparities in remuneration that reflect differences in years of education or the number of hours worked are acceptable. Furthermore, enterprise compliance with government policies

¹³ Recommendation No. 111 Discrimination (Employment and Occupation) Recommendation, 1958.

designed to correct historical patterns of discrimination and thereby to extend equality of opportunity and treatment in employment does not constitute discrimination. Giving effect to the principle of equal treatment may require special measures and the accommodation of differences.

3 Suggested actions to eliminate discrimination and promote equality of treatment

Companies are encouraged to eliminate discrimination in the employment through the following measures.

- ➔ **Make a strong commitment from the top.** When the most senior management assumes responsibility for equal employment issues and demonstrate a commitment to diversity, they send a strong signal to other managers, supervisors and workers.
- ➔ **Conduct an assessment** to determine if discrimination is taking place within the enterprise, for example using a self-assessment questionnaire.
- ➔ **Set up an enterprise policy** establishing clear procedures on non-discrimination and equal opportunities; and communicate it both internally and externally.
- ➔ **Provide training** at all levels of the organisation, in particular for those involved in recruitment and selection, supervisors and managers, to help raise awareness and encourage people to take action against discrimination.
- ➔ **Support on-going sensitization campaigns** to combat stereotypes.
- ➔ **Set measurable goals and specific time frames** to achieve objectives.
- ➔ **Monitor and quantify progress** to identify exactly what improvements have been made
- ➔ **Modify work organization and distribution of tasks** as necessary to avoid negative effects on the treatment and advancement of particular groups of workers. This includes measures to allow workers to balance work and family responsibilities.
- ➔ **Ensure equal opportunity for skills development**, including scheduling to allow maximum participation;
- ➔ **Address complaints**, handle appeals and provide recourse to employees in cases where discrimination is identified;
- ➔ **Encourage efforts in the community** to build a climate of equal access to opportunities (e.g. adult education programs and the support of health and childcare services).

4 Equal remuneration

The principle of non-discrimination in respect of employment and occupation includes the principle of equal remuneration for men and women who produce work of equal value.¹⁴ The principle of equal pay for work of equal value means that rates and types of remuneration should be based not on an employee's sex but on an objective evaluation of the work performed.

Equal remuneration is a fundamental right of women and men workers. Nonetheless, pay differential between the sexes persists; on average worldwide, women's income per hour is about 75 per cent of that of men. There are several reasons for this gender pay gap. Women are under-represented within higher paying sectors and larger enterprises which tend to pay more. They are under-represented in higher-paid jobs within companies; jobs where women workers are dominant often are classified at lower levels, resulting in lower pay. Women also are under-represented in enterprises with trade unions. Women are highly concentrated in "flexible" work such as part-time, piece-rate or temporary work, which are poorly paid; and work fewer overtime hours than men. Discrimination with respect to promotion in employment also is an important factor.

The principle of equality pertains to all the elements of remuneration, including salary or ordinary wage and other basic fees and benefits, directly or indirectly paid, in money or in kind.

This principle can be implemented by some practical measures:¹⁵

- ➔ Job classification systems and pay structures should be based on objective criteria, irrespective of the sex of the workers concerned.
- ➔ Any reference to a particular sex should be eliminated in all remuneration criteria, and in collective agreements, pay and bonus systems, salary schedules, benefit schemes, medical coverage and other fringe benefits.
- ➔ Any remuneration system or structure which has the effect of grouping members of a particular sex in a specific job classification and salary level should be reviewed and adjusted to ensure that other workers are not performing work of equal value in a different job classification and salary level.
- ➔ Corrective measures should be taken whenever a situation of unequal remuneration is discovered.
- ➔ Special training programmes could be organized to inform staff, particularly supervisors and managers, of the need to pay employees on the basis of the value of the work and not of who is performing the work.

➔ Separate negotiations on equal remuneration should be conducted between management, employees' representatives and the women workers affected by the existing unequal job classification or pay structure of a particular workplace.

➔ Part-time and hourly employees should be compensated in all types of remuneration on an equal basis with full-time employees, proportional to the number of hours they work.

➔ The value of work should be based only on the work components, responsibilities, skills, efforts, working conditions and main results.

Consultation and engagement with workers' representatives at the enterprise level

Workers, through their representatives, can be management's strongest ally in combating discrimination. Enterprises should consider setting up bipartite bodies involving workers' freely chosen representatives, to determine priority areas and strategies, and to counter bias in the workplace. Involvement of workers' representatives in tackling discrimination at work will ensure that they are committed to the goals.

¹⁴ ILO Equal Remuneration Convention (No. 100).

¹⁵ For detailed guidance, see Promoting equity. Gender-neutral job evaluation for equal pay: a step-by-step guide. ILO, Geneva. 2008. Text attached to reply.

Resources

ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (revised 2006).

Text available at:

http://www.ilo.org/wcmsp5/groups/public/---ed_emp/---emp_ent/documents/publication/wcms_094386.pdf

➔ International Labour Standards

Discrimination (Employment and Occupation) Convention, 1958 (No.111) and Recommendation (No.111).

Equal Remuneration Convention, 1951 (No.100) and Recommendation (No.90).

Part-time Work Convention, 1994 (No.175) and Recommendation (No.182).

Maternity Protection Convention, 2000 (No.183) and Recommendation (No.191).

Workers with Family Responsibilities Convention, 1981 (No.156) and Recommendation (No.165).

Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No. 159) and Recommendation (No. 168).

Older Workers Recommendation, 1980 (No. 162).

Migration for Employment Convention (Revised), 1949 (No. 97).

Vocational Rehabilitation and Employment (Disabled Persons) Convention (No. 159) and Recommendation (No. 168)

Texts of conventions are available at:

<http://www.ilo.org/ilolex/english/convdisp1.htm>

Texts of recommendations are available at:

<http://www.ilo.org/ilolex/english/recdisp1.htm>

➔ Other normative instruments

United Nations Convention on the Rights of Persons with Disabilities; for text see:

http://www.ilo.org/wcmsp5/groups/public/---ed_emp/--ifp_skills/documents/publication/wcms_103529.pdf

➔ Other resources

“ILO Gender Equality Campaign 2008–09,” World of Work Magazine, Vol. 65, April 2009. Text available at:

http://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/publication/wcms_105172.pdf

Gender Equality and Decent Work - Selected ILO Conventions and Recommendations Promoting Gender Equality, 2006.

ILO Gender Bureau. Text available at:

http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/publication/wcms_088023.pdf

Resource Guide - Gender equality in the world of work. Text available at:

<http://www.ilo.org/public/english/support/lib/resource/subject/gender.htm>

Gender Equality: A Guide to Collective Bargaining, S. Olney, E. Goodson, K. Maloba-Caines, F. O'Neill, 1998.

Booklet 1: Overview

<http://www.ilo.org/public/english/dialogue/ifpdial/downloads/papers/booklet1.pdf>

Booklet 2: Working conditions

<http://www.ilo.org/public/english/dialogue/ifpdial/downloads/papers/booklet2.pdf>

Booklet 3: Maternity and family responsibilities

<http://www.ilo.org/public/english/dialogue/ifpdial/downloads/papers/booklet3.pdf>

Booklet 4: Defending rights of non-permanent and vulnerable workers

<http://www.ilo.org/public/english/dialogue/ifpdial/downloads/papers/booklet4.pdf>

Booklet 5: Dignity at the workplace

<http://www.ilo.org/public/english/dialogue/ifpdial/downloads/papers/booklet5.pdf>

Booklet 6: Giving women a voice

<http://www.ilo.org/public/english/dialogue/ifpdial/downloads/papers/booklet6.pdf>

Making work arrangements more family-friendly

<http://www.ilo.org/public/english/protection/condtrav/pdf/infosheets/wf-5.pdf>

Work-family reconciliation:What trade unions are doing

<http://www.ilo.org/public/english/protection/condtrav/pdf/infosheets/wf-8.pdf>

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