

Equal Opportunities Commission

Guidelines For Employers



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Equal Opportunities Commission, Guidelines for Employers

The purpose of this document is to enable the drawing up and implementation of an Equal Opportunity Policy at the Place of Work.

This document is published pursuant to section 27(3)(f) of the Equal Opportunities Act 2008.

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1. INTRODUCTION

1.1 Objective of the Guidelines

The objective of these Guidelines is to:

- (i) provide guidance to employers on how to prevent discrimination at work and achieve equality of opportunities in the field of employment;
- (ii) help employers who have duties and obligations under the Equal Opportunities Act 2008 (hereinafter the “EOA” or the “Act”) to understand their responsibilities and rights;
- (iii) help employers prepare and apply an equal opportunity policy at work with a view to minimizing risk of discrimination; and
- (iv) help employers promote recruitment, training, selection and employment on the basis of merit in relation to its employees or prospective employees.

1.2 Authority

- (i) The Guidelines are issued by the Equal Opportunities Commission (hereinafter the “EOC” or the “Commission”) under section 27(3)(f) of the Act which gives the Commission the power to issue guidelines and codes for the avoidance of discrimination notably in the field of employment.
- (ii) Section 9 of the Act provides that every employer needs to draw up and apply an equal opportunity policy at its place of work, with a view to minimizing the risks of discrimination and promoting recruitment, training, selection and employment on the basis of merit.
- (iii) These Guidelines aim at shedding light on the various aspects that have to be taken into account by the employer when drafting the equal opportunity policy.

- (iv) Employers are required to draw up and apply an equal opportunity policy by 31 July 2013 at latest.
- (v) References in these Guidelines to the Act include all subsequent amending legislation.

1.3 Mandate of the Commission

The Act gives the Commission the legal duty to:

- (i) Work towards the elimination of discrimination, and the promotion of equality of opportunity and good relations between persons of different status;
- (ii) Keep under review the working of the Act and any relevant law and submit to the Attorney-General proposals for amending them, if required;
- (iii) Of its own motion or following a complaint, carry out an investigation;
- (iv) Attempt to reconcile the parties to whom and against whom a complaint relates;
- (v) Conduct and foster research and educational and other programs for the purpose of eliminating discrimination and promoting equality of opportunity and good relations between persons of different status; and
- (vi) Prepare appropriate guidelines and codes for the avoidance of discrimination and take all necessary measures to ensure that the guidelines and codes are brought to the attention of employers and the public at large.

1.4 Definitions of 'employer', 'employee' and 'employment'

- (i) An 'employer' under the Act includes a person, an enterprise, the State, a statutory corporation, a body of persons employing

a worker or a group of employers or a trade union of employers.

- (ii) An 'employee' for its part includes (i) a person who has entered into, or works under, a contract of apprenticeship, and (ii) a part-time or temporary employee; but does not include a job contractor.
- (iii) 'Employment' for its part is defined under the Act as including (i) part-time or temporary employment, (ii) work under a contract for services, (iii) work under a contract of apprenticeship, and (iv) the employment of a job contractor.

1.5 Scope of application

- (i) Subject to the provisions of paragraph (ii) below, these Guidelines shall apply to all employers in Mauritius (including Rodrigues and Agalega).
- (ii) These Guidelines are not of a mandatory nature for employers employing no more than 10 employees on a full-time basis.
- (iii) Notwithstanding paragraph (ii) above, irrespective of the fact that they employ no more than 10 employees on a full-time basis, it is nonetheless recommended that these employers ensure that their policies (if any) and practices are consistent with the Act and that they follow the general spirit and intent of these Guidelines.

1.6 Status of the Guidelines

- (i) These Guidelines do not impose any legal obligation, nor are they an authoritative statement of the law. However, the Guidelines can be used in evidence in legal proceedings brought under the Act.
- (ii) Employers are liable for acts of unlawful discrimination done by their workers against their employees in the course of employment. However, employers should be able to defend themselves better in any case of alleged discrimination if they can show that they have taken the steps recommended in these Guidelines.

1.7 Benefits of the Guidelines

These Guidelines should help employers to:

- (i) understand and comply with their obligations under the Act;
- (ii) adopt and put into practice effective policies, designed to prevent unlawful discrimination, and ensure equality of opportunity for all;
- (iii) draw on the talents, skills, experience, networks and different cultural perspectives of a diverse workforce;
- (iv) create a working environment where people feel they are respected and valued;
- (v) reduce the risks of legal liability, costly and time-consuming grievances and damage to productivity, staff morale and the organisation's reputation; and
- (vi) foster good relations in the workplace.

1.8 Effective date

These Guidelines shall come into effect as from 15 April 2013.

1.9 Disclaimers

- (i) These Guidelines set out the general framework wherefrom employers can set to draw up their equal opportunity policy in accordance with the requirements of the Act. They shall not be construed as prescribing any exclusive course of action or management or otherwise for employers. Further, they should be interpreted, customized and adapted mutatis mutandis in accordance with the nature, requirements and exigencies of the business activities of each and every employer, to the extent provided under the Act.
- (ii) These Guidelines are meant to provide the minimum standards. They are not intended to replace or override any provisions of the

law and should not be construed as one. They should be read in conjunction with the provisions of the Act and any regulations made thereunder and any other guidelines and codes that the Commission may issue from time to time.

- (iii) These Guidelines should not be read too narrowly or literally. They are intended to explain the general principles of the law, to illustrate how the Act might operate in certain situations and to provide general guidance on good practice. They should not be seen as a substitute for seeking specialist legal advice in relation to the Act.
- (iv) These Guidelines have been issued based on the provisions of the Act at the date hereof. They may be subject to review and may be amended from time to time by the Commission as and when the Commission shall deem fit and notably in order to reflect any changes made in the Act and/or any regulations made thereunder.
- (v) The sample policy on equal opportunity at work as set forth in the Appendix hereto is only a sample and should not be construed as being an exclusive or authoritative equal opportunity policy at the workplace. It may therefore need to be adapted to suit an organisation's individual circumstances.

2. THE LEGAL CONTEXT

2.1 What is discrimination under the law?

Discrimination is where an employer treats an employee or a prospective employee less favourably than another one in similar circumstances on the basis of his/her status.

'Status' under the EOA refers to the following 12 protected grounds:

- Age
- Caste
- Colour
- Creed
- Ethnic origin
- Impairment (a handicap that a person may have and could be (i) physical, that is, total or partial loss of a bodily function, total or partial loss of a part of the body, malfunction of a part of the body, malformation or disfigurement of a part of the body, (ii) a mental or psychological disorder or disease, (iii) the presence in the body of organisms that may cause disease (for example, AIDS)
- Marital status (whether the person is single, civilly or religiously married, married but living separately from one's spouse, divorced, widowed or is a single parent)
- Place of origin
- Political opinion
- Race
- Sex (includes discrimination by reason of (i) pregnancy, (ii) family responsibility, that is, the responsibility of the person to care for or support a dependent child or any other immediate family member in

need of care or support, (iii) potential pregnancy, that is, the fact that a woman is or may be capable of bearing children, or has expressed the desire to become pregnant; or is likely/perceived as being likely to become pregnant)

- Sexual orientation (homosexuality including lesbianism, bisexuality or heterosexuality).

An employer cannot therefore discriminate against an employee/prospective employee on the basis his/her status, that is, on any one or more of the above-mentioned 12 grounds. Employers should not be basing themselves on the status of its employees or prospective employees but should rather be exclusively merit-oriented in their approach when it comes to selecting, recruiting, employing, appraising, promoting or dismissing an employee. Merit itself is made up of the following 3 inextricably linked elements: (i) the talent, (ii) the competence and (iii) the willingness and desire to work of the employee or prospective employee.

Discrimination at work causes harm not only to the victims but also to the organisation itself. Low morale, frustration and lack of motivation hamper performance, which in turn negatively affects an institution's progress and image. It is the responsibility of each employer to ensure a conducive work environment, where all employees/prospective employees are given an equal opportunity to prove themselves. It is the duty of each employer to make sure that employees/prospective employees are not discriminated against and that every employee/prospective employee is given a fair go at each and every stage of the employment process (job advertisement, selection/interview stage, appraisals, promotion, restructuring, disciplinary proceedings, termination, retirement etc) and that the terms and conditions of employment are not discriminatory in nature.

2.2 Types of discrimination

There are 3 types of discrimination under the Act:

- i) direct discrimination;
- ii) indirect discrimination; and
- iii) discrimination by victimisation.

2.2.1 Direct discrimination

Direct discrimination is when an employer treats or proposes to treat someone less favourably than others because of the status of the person or because of a characteristic that generally appertains or is imputed to persons of the status of the person.

For example, there is direct discrimination where Mr. A and Mr. B, holding the same qualifications and experience apply for a job at Mr. C's company and Mr. C calls Mr. B only for a job interview but not Mr. A because of Mr. A's ethnic origin.

Likewise, there is direct discrimination where Mrs. X, a shop assistant, informs her employer Mr. Y that she is pregnant and Mr. Y imposes on her a lesser position within the company and/or a reduced salary by reason of her pregnancy.

In an alleged case of direct discrimination, it is up to the complainant to prove his/her case.

2.2.2 Indirect discrimination

Indirect discrimination is when an employer imposes or proposes to impose a condition, requirement or practice ("CRP") on a person/group of persons, such CRP being unjustifiable in the circumstances and has/ is likely to have the effect of disadvantaging the aggrieved person(s).

For example, there is indirect discrimination when Mrs. A's company, a

would be employer, advertises for recruitment and in that advertisement imposes a condition that candidates should possess a particular qualification, skill or characteristic which is not commensurate or consonant with the nature or requirements of the job, all of this with a view to favouring Mr. B who holds such qualification, skill or characteristic, at the expense of other candidates. Basically, indirect discrimination occurs where the job offered is tailor made for a particular person.

In an alleged case of indirect discrimination, the burden to prove that the CRP is justifiable lies on the discriminator and not on the person making the complaint.

The determination as to whether the CRP is justifiable or not in the circumstances would depend, amongst other factors, on the following:

- (i) the nature and extent of the disadvantage resulting, or likely to result, from the imposition or proposed imposition of a CRP;
- (ii) the likelihood of overcoming or mitigating the disadvantage;
- (ii) whether the disadvantage is proportionate to the result sought to be achieved by the discriminator.

2.2.3 Discrimination by victimisation

Discrimination by victimisation is when an employee is subjected to some sort of detriment or is so threatened, or is treated less favourably as compared to others by the discriminator (employer or colleague employee) because he/she:

- (i) has made, or proposes to make, a complaint against the discriminator or any other person under the Act;
- (ii) has brought, or proposes to bring proceedings under the Act against the discriminator or any other person;
- (iii) has furnished or proposes to furnish, any information or has produced, or proposes to produce a document to a person exercising or

performing any power or function under the Act, for example to members or officers of the Equal Opportunities Commission;

- (iv) has attended or proposes to attend an inquiry under the Act or to provide evidence or testimony as a witness before the Commission for instance;
- (v) has made in good faith an allegation that the discriminator or any other person has committed an act of discrimination in contravention of the Act; or because
- (vi) the discriminator believes that the aggrieved person has done or proposes to do any of the things referred to above.

It is apposite to note here that the complainant cannot invoke discrimination by victimisation if the allegation made in the initial complaint was false and not made in good faith.

3. PROMOTING EQUAL OPPORTUNITIES AT WORK: A FRAMEWORK FOR ACTION

3.1 Employment of persons

The employer has the responsibility of ensuring that there is no discrimination against a prospective employee in the recruitment process, be it:

- (a) In the advertisement of a job, for example, by tailor-making the advertisement so as to favour a certain person at the expense of another person/group of persons. Any CRP has to be justifiable, as mentioned above.
- (b) In the arrangements made for the purpose of determining who should be offered employment. For example, it may amount to discrimination to subject a person to examinations as a pre-condition to be employed, whereas others in the same circumstances are not subject to such a pre-condition. Likewise, a prospective employer who calls some candidates for interview knowing well that one of them is on a wheelchair and whilst such prospective employer is able to make the necessary arrangements to enable that person access to his premises but fails to do so, in so doing, he/she would be discriminating against the candidate on the wheelchair.
- (c) In determining who should be offered employment. For example, in a group of people eligible for a post, the same assessment criteria should be used for all, irrespective of their status. Likewise, the employer cannot impose an unreasonable age limit for a job where the age factor is immaterial and irrelevant, hence excluding candidates above or below a certain age.
- (d) In the terms or conditions on which employment is offered. For example, employee A cannot be offered more unfavourable terms or conditions of work than employee B when both A and B have the same tasks to carry out. Likewise, employee X cannot be afforded

more favourable terms and conditions of work than employee Y when both of them do the same work and have similar qualifications and experience.

- (e) By refusing or deliberately omitting to offer employment to a person.

Very often, companies, large, medium-sized or small, do not advertise for jobs. The EOA advocates and strongly encourages a system of merit. Therefore, it is important to advertise for jobs, especially to give an equal opportunity to all interested persons to apply whilst ensuring transparency in the recruitment process. Moreover, the advertisement being made should not be a mere eye wash and tailor-made such that the profile of the ideal candidate sought matches substantially that of a person who has already been identified and favoured to get the job at the expense of other candidates. Such tailor-made advertisements not only deprive many qualified and competent candidates from even making it to the interview stage but more importantly deprive the company itself from tapping into, and benefiting from, the skills, experience and expertise of better candidates, hence representing a significant opportunity loss for the company. The company therefore stands to lose the most in this process.

3.2 Persons in employment

Similarly, it is unlawful for an employer to discriminate against an employee:

- (a) in the terms or conditions of employment that the employer affords that employee. For instance, imposing additional working hours on a divorced female employee as compared to other female staff on the ground that she can afford to spare more time at work than her other female colleagues who are married;
- (b) in conditions of work or occupational safety and health measures. For instance, not providing certain necessary protective and security

- equipment to an employee in a factory whilst others are given or provided with such equipment;
- (c) in the provision of facilities related to or connected with employment. For instance, failing to provide pregnant employees with certain facilities relating to seating, rest etc which are required by law;
 - (d) by denying the employee access, or limiting access, to opportunities for advancement, promotion, transfer or training, or to any other benefit, facility or service associated with employment. For instance, where a vacancy arises in a department and the candidate who is best positioned and fully deserves to get such promotion is arbitrarily transferred to another department prior to the closing date so that he/she is deprived of the opportunity to postulate;
 - (e) by terminating the employment of the employee. For instance, terminating the employment of an employee when the employer becomes aware of the employee's political opinion and which is not the same as his/hers; or, terminating the employment of an employee on learning of the latter's pregnancy.
 - (f) by placing the employee at a disadvantage in any other manner. For instance, an employee with a physical handicap not being given work to do and which he/she has the capacity to do, and being deliberately left out or marginalized at the workplace as compared to other employees with no impairment, would amount to discrimination.

3.3 Persons undergoing training

It is also unlawful for employers to discriminate against a person seeking for or undergoing training, be it:

- (a) in the terms or conditions on which the person is afforded access to a training course or other facility concerned with training;
- (b) by terminating the person's training or placing him/her at a disadvantage during the course of training.

For instance, not giving access to employee A (who is of a certain ethnic origin) to a training course whilst other employees within the same group as employee A, being of a different ethnic origin, are provided with such access, will amount to discrimination. Employees who are eligible to training facilities should be treated at par irrespective of their status, in the preceding illustration being ethnic origin.

3.4 Promoting gender equality at the place of work

The employer has the legal duty to promote equality among his employees. Therefore, taking into consideration the employer's resources and circumstances in general, he has to take such measures as may be required to ensure that working conditions are suitable for men and women alike, and to facilitate gainful employment and parenthood for female and male employees.

3.5 Exceptions

3.5.1 Sex discrimination

An employer/prospective employer should not discriminate against an employee/prospective employee on the basis of sex in recruitment, promotion, transfer or training. However, such discrimination is allowed where being of a particular sex is a genuine occupational qualification for employment, promotion, transfer or training, such as where:

- (a) the duties relating to the employment or training can only be performed by a person having particular physical characteristics, other than strength or stamina, that are possessed only by persons of that sex;
- (b) the duties relating to the employment or training need to be performed by a person of a particular sex to preserve decency or privacy because they involve the fitting of clothing for persons of that sex;
- (c) the duties relating to the employment or training include the conduct of searches of the clothing or bodies of persons of a particular sex;

- (d) the nature of the establishment where the work is carried out requires a position to be held by a person of a particular sex because:
 - (i) it is a hospital, prison or other establishment for persons requiring special care, supervision or attention;
 - (ii) the other persons are all of the same sex, except where the presence of a person of the opposite sex is exceptionally required; and
 - (iii) it is reasonable, having regard to the essential character of the establishment, that the position should not be held by a person of the opposite sex; or
- (e) the holder of the position provides persons with personal services for promoting their health, welfare or education, and those services can most effectively be provided by a person of a particular sex.

3.5.2 Discrimination based on impairment

An employer may discriminate against a person who has an impairment in the following circumstances:

- (a) If that person would not be able to carry out the inherent requirements of the particular employment; for instance, in the field of masonry, where it would be difficult for a person on wheelchairs to perform the main tasks; or
- (b) If, in order to carry out those requirements, the person would require services or facilities that are not required by persons without an impairment and the provision of which would impose an unjustifiable hardship on the employer.

In determining whether there is an unjustifiable hardship, all circumstances have to be taken into consideration, including:

- (i) the nature of the benefit, facility or service or detriment likely to accrue or be suffered by any person concerned, and

- (ii) the financial circumstances of, and the estimated amount of expenditure required to be made by the employer.

In dealing with the above situations, the employer has to take into account the person's past training, qualifications and experience relevant to the particular employment. If that person is already an employee, the person's performance as an employee, and all other relevant factors that it is reasonable to take into account, should be considered.

The employer may also discriminate against a person who has an impairment if, because of the nature of the impairment, the work environment or the nature of the work involved, there is or likely to be a substantial risk that the person will injure himself, or a risk that he/she will injure others. The employer has to make an assessment to see whether it would be reasonable in the circumstances to take that risk.

3.5.3 Other exceptions

Other instances where the employer/prospective employer may discriminate against a person are summarised below:

- (a) On the ground of age, where the offer of employment is limited to persons of a particular age;
- (b) On the ground of religion where it would otherwise be in contravention of section 11 of Constitution of Mauritius to hinder a person in employment in the enjoyment of his freedom to practice his religion, or where being of a particular religion is a necessary qualification for employment in a religious shop;
- (c) In determining who should be offered employment in relation to the provision of domestic or personal services in, or in relation to, any person's home;

- (d) On the basis of political belief or activity, in the offering of employment to another person as a ministerial adviser, member of staff of a political party, member of the electorate staff of any person or any similar employment;
- (e) In determining who should be offered employment where the employer employs no more than 10 employees on a full-time basis;
- (f) In determining who should be offered employment or training with respect to a dramatic performance or other form of entertainment, or an artist's photographic or exhibition model in the production of a work of art, visual image or sequence of visual images. This is because the duties relating to the employment or training of persons in such circumstances may require the participation of a person of a particular age, sex, race or colour, for the purposes of authenticity.

3.6 Employment agencies

An employment agencies cannot discriminate against a person-

- (a) by refusing to provide the person with any of its services;
- (b) in the terms or conditions on which it offers to provide the person with any of its services; or
- (c) in the manner in which it provides the person with any of its services.

An 'employment agency' is defined in the Act as a business set up for the purpose of placing persons in employment in Mauritius or a abroad.

3.7 Information in respect of qualifications

A person may feel discriminated upon if he/she is not offered employment following an application made or an interview done. Similarly, an employee may have reason to believe that he/she has been the subject of discrimination, following a transfer or a promotion exercise. In such circumstances, section 16 of the Act affords that person the right to obtain

in writing, from the employer, information on the experience or qualifications of the successful candidate as is available to the employer. The employer is duty-bound to provide such information, without however communicating any information which identifies or purports to identify the successful candidate.

3.8 Sexual harassment

Sexual harassment whilst being an offence under the Criminal Code is also proscribed under the Act, whether at work or elsewhere.

Sexual harassment happens when a person, in circumstances in which a reasonable person would have foreseen that the other person would be humiliated, offended or intimidated, either (i) makes an unwelcome sexual advance, or an unwelcome request for a sexual favour, to another person, or (ii) engages in any other unwelcome conduct of a sexual nature towards another person. The term "conduct" here includes making or issuing an unwelcome oral or written statement of a sexual nature to a person or in the presence of a person.

An employer or agent of an employer cannot sexually harass an employee or a person seeking employment from the employer. Likewise, an employee cannot sexually harass a fellow employee or a person seeking employment from his/her employer. Such a harassment would amount to an offence under the Act.

Any employer who sexually harasses an employer or an employee who sexually harasses a fellow employee commits an offence and shall, on conviction, be liable to a fine not exceeding Rs. 100,000 and to imprisonment for a term not exceeding 5 years.

Employers should ensure that sexual harassment cases at their workplace are not tolerated and are duly reported. They should also ensure that an employee who wishes to report a fellow employee for sexual harassment is not only able to do so in a most confidential manner but is also protected from any backlash or retaliation.

3.9 A framework for action: drawing up an equal opportunity policy on employment and putting the policy into practice

3.9.1 The aim of an equal opportunity policy in employment is to make sure that:

- a. no job applicant or worker receives less favourable treatment than another, on the basis of his or her status, that is, age, caste, colour, creed, ethnic origin, impairment, marital status, place of origin, political opinion, race, sex or sexual orientation;
- b. no job applicant or worker is placed at a disadvantage by requirements, provisions, criteria, conditions or practices, unless they can be justified as a necessary and appropriate means of achieving a legitimate aim; and
- c. workers are given training and encouragement to take equal advantage of opportunities in the organisation, irrespective of their status.

3.9.2 An equal opportunity policy in employment should be a written policy, which sets out:

- a. the employer's commitment to the principle of equality;
- b. the organisation's ethos and values;
- c. how the policy applies to the organisation's procedures and practice;
- d. what is and what is not acceptable behaviour at work;
- e. how to use the organisation's complaints procedure to raise any concerns or complaints workers might have about discrimination;
- f. the rights and responsibilities of all;

- g. how the organisation will deal with any breaches of the policy; and
- h. the possibility of recourse to the equal opportunities commission, irrespective of the internal complaints procedure.

3.9.3 The policy should cover all aspects of employment, including recruitment, terms and conditions of work, training and development, promotion, performance, grievance, discipline and treatment of workers when their contract of employment ends.

3.9.4 As far as possible, the equal opportunity policy should be drawn up and agreed in consultation with workers and any recognised trade unions or other workplace representatives (if any).

3.9.5 The Appendix hereto contains a sample equal opportunity policy in employment. It sets standards of good practice for all employers.

3.9.6 The employer should promote the equal opportunity policy at work by publicising as widely as possible, for example through office notice boards, circulars, email bulletins, contracts of employment, training on equality, induction, internal and external websites, annual reports and staff newsletters and handbooks.

3.9.7 The policy should be a priority for the organisation, and an essential part of its business or corporate plan.

3.9.8 Overall responsibility for the policy, and for reporting regularly on its effectiveness, should rest with a senior manager (where applicable).

3.9.9 Employers should make sure all their workers understand the organisation's equal opportunity policy, and how it affects them, and that

they are aware of any plans for putting it into practice. This could be done by providing basic training and providing written information and guidance on the policy and plan. Some workers may need more advanced training, depending on their jobs. Equal opportunities should also be a standard component of other training courses, at all levels.

3.9.10 Employers should make sure in-house trainers are themselves trained before running courses for other staff. External trainers also need to be fully informed about the organisation's policies, including its equal opportunity policy.

3.9.11 Employers will find it helpful to give a named manager responsibility for equal opportunity training in the organisation.

4. ENSURING EQUALITY OF OPPORTUNITIES AND GOOD EMPLOYMENT PRACTICE

The Act makes it unlawful for employers to discriminate against a person on the ground of his/her status or subject the person to harassment, in the arrangements they make for recruitment and selection, and in the terms and conditions on which they offer employment, training or promotion.

Employers must therefore apply equal opportunity policy to all aspects of employment, from recruitment to termination of the employment contract.

RECRUITMENT

Principles of good practice

The following principles apply to all aspects of recruitment for employment, including promotion, and training:

- (i) Recruitment policies, procedures and practices should meet all the terms and objectives of the organisation's equal opportunity policy.
- (ii) All staff responsible for recruitment should receive training in the equal opportunity policy.
- (iii) Opportunities for employment, including promotion, and training should be equally open to all eligible candidates, and selection should be based on merit.
- (iv) No applicant or worker should be placed at a disadvantage by rules, requirements, conditions or practices that have a disproportionately adverse effect on his or her status.

Job descriptions

- (i) It is recommended that employers prepare a job description for any vacant post they decide to fill.

- (ii) To avoid claims that a job description includes a requirement that might be indirectly discriminatory, employers need to make sure that:
 - a. they are able to justify each duty or task as being necessary;
 - b. the job description does not overstate a duty, or the responsibilities attached to it; and
 - c. the job description is written in plain English, French or Creole, as the case may be.
- (iii) A helpful way of drawing up a job description might be to describe the duties and the tasks a person would be expected to carry out over a certain period of time, for example an average working day or week, in order to get a clear picture of what the job actually entails.

Person specifications

- (i) A person specification describes the skills, knowledge, abilities, qualifications, experience and qualities that are considered necessary or desirable in a candidate, in order to perform all the duties in the job description satisfactorily. It is recommended that employers prepare a written person specification to accompany the job description.
- (ii) To avoid claims that a person specification includes potentially discriminatory requirements, criteria or conditions, employers need to make sure of the following:
 - a. The person specification includes only the criteria needed to perform the duties in the job description satisfactorily;
 - b. The person specification does not overstate the requirements; for example, by calling for 'excellent knowledge of English' when 'good understanding' is more appropriate, or by asking for higher qualifications than are actually needed to do the job satisfactorily;

- c. The person specification makes clear the relative importance placed on each criterion, and whether it is necessary or desirable;
 - d. As far as possible, all the criteria are capable of being tested objectively. This means avoiding vague or subjective qualities. Attributes such as 'leadership', which are widely used in the selection process, need to be precisely and objectively defined in terms of the measurable skills and qualities that contribute to it; for example, fairness, knowledge, diplomacy, imagination and decisiveness;
 - e. The person specification makes clear that degrees or diplomas obtained abroad are acceptable, if they are of an equivalent standard to Mauritius.
- (iii) Employers should consider reviewing the person specifications they have used over a period of time, or a representative sample of them, as part of their equal opportunity review of the recruitment process, to make sure the requirements and criteria applied do not contribute to discrimination.

Job advertisements

- (i) It is recommended that employers take the following steps, to make sure all opportunities for employment or training are advertised widely, fairly and openly.
- (ii) Employers should avoid recruitment, solely or in the first instance, on the basis of recommendations by existing staff.
- (iii) The advertisement, in all its forms (including signs in shop windows, and on notice boards and recruitment websites), must not indicate an intention to discriminate unlawfully. Nor should it be possible for an ordinary member of the public to understand the advertisement as being discriminatory unless a statutory exception to discriminate applies, and this is clearly stated in the advertisement.

- (iii) Employers should consider including a reference to the organisation's equal opportunity policy in the advertisement.
- (iv) Every effort should be made to ensure that the advertisement accurately reflects the job description and the requirements listed in the person specification.
- (v) Employers should remember, when recruiting through recruitment agencies, careers offices, schools or online agencies, that it is unlawful to:
 - i. instruct them to discriminate, for example by suggesting that certain groups would (or would not) be preferred; or
 - ii. put pressure on them to discriminate against people from a particular group (or groups).
- (vi) Recruitment and other agencies should be made aware of the employer's equal opportunity policy, as well as other relevant policies. They should also be given copies of the job descriptions and person specifications for posts they are helping the employer to fill.
- (vii) Employers should consider reviewing the job advertisements they have placed over a period of time, or a representative sample of advertisements, as part of their equal opportunity review of the recruitment process, to make sure the advertisement did not contribute to discrimination.

Application forms

- (i) It is recommended that, where practicable, all employers should use a standard application form. This has the following advantages:
 - a. It reduces the time spent in sifting through a great deal of information that is not relevant to the job, which is usually the case with CVs and application letters.

- b. It helps employers obtain the information they need, and in the form in which they need it, to make an objective assessment of the applicant's ability to do the job.
 - c. It provides employers with evidence that they have tried to meet their legal obligations, should they face legal proceedings under the Act or otherwise.
 - d. It gives all applicants the opportunity to compete on equal terms.
- (ii) To reduce the risk of unlawful discrimination, employers should follow the guidelines below:
- a. The section of the application form requesting personal information (including information about the status of the person) should be detachable from the rest of the form, and not made known to members of the selection panel before the interview.
 - b. The question about an applicant's status should include a clear explanation as to why this information is needed, and an assurance that the information will be treated in strictest confidence, and will not be used to assess suitability for the job, or in the selection decision.
 - c. Only information that is relevant to the job, and to the skills and qualifications listed in the person specification, should be requested in the application form (apart from the questions in the personal details section of the form).
 - d. Applicants should not be asked to provide photographs, unless a genuine occupational requirement or statutory exception applies.
 - e. Applicants should be assured that their referees will not be approached unless they are offered the job.
 - f. Recruitment and employment agencies acting on behalf of an organisation should have copies of its equal opportunity policy, and understand its recruitment policies, and the role of the application form in the selection process.

- (iii) Employers who accept CVs might consider publishing guidance on their websites, to help applicants organise their CVs as closely as possible to the organisation's job application form (if they use one), or the form in which employers would prefer to receive the information.
- (iv) Employers should review their job application form periodically, as part of their equal opportunity review of the recruitment process, to make sure it does not contribute to any discrimination.

The selection process

- (i) Employers are responsible for making sure their selection procedures are fair, and operate consistently, to ensure the appointment of the best person for the job, irrespective of the person's status.
- (ii) Every selection decision, from short-listing to appointment, is equally important and it is recommended that employers keep records that will allow them to justify each decision, and the process by which it was reached. Employers need to be able to show that:
 - a. each selection decision was based on objective evidence of the candidate's ability to do the job satisfactorily, and not on assumptions or prejudices, and
 - b. all staff involved in the selection process had received training on the equal opportunity policy, and its application to recruitment.
- (iii) Actual selection procedures will vary from one organisation to another, depending on size and administrative resources – for example, some organisations may be able to ensure that a member of staff with expertise in personnel matters is involved in the selection process – but the principles of fair selection apply to all.

- (iv) As far as possible, to ensure consistency, it would be best if the same staff were responsible for selection decisions at all stages of the recruitment process for each vacancy.

Shortlisting

- (i) It is recommended that employers build the following guidelines for good practice into their selection procedures and practice:
 - a. Wherever possible, more than one person should be involved in shortlisting candidates, to reduce the chance of one individual's bias prejudicing an applicant's chances of being selected.
 - b. The marking system, including the cut-off score for selection, should be agreed before the applications are assessed, and applied consistently to all applications.
 - c. Each person involved in the selection should mark the applications separately, before meeting to agree a final mark.
 - d. Selection should be based only on information provided in the application form (where one is used), or in any formal performance assessment reports, in the case of internal applicants.
 - e. The weight given to each item in the person specification should not be changed during shortlisting; for example, in order to include someone who would otherwise not be shortlisted.

Interviews

- (i) For many employers, the interview is the decisive stage of the selection process. It is also the stage when it is easiest to make judgements about a candidate based on instant, subjective and, sometimes, wholly irrelevant impressions. If assumptions about the capabilities or characteristics of people of a certain status contribute

to an unfavourable impression, this could lead to an unlawful discriminatory selection decision.

- (ii) To strengthen their legal defence in any proceedings alleging unlawful discrimination, it is recommended that employers take steps to make sure all job interviews are conducted strictly on the basis of the application form, the job description, the person specification, the agreed weight given to each criterion, and the results of any selection tests, so that all applicants are assessed objectively, and solely on their ability to do the job satisfactorily.
- (iii) Staff involved in selection panels would benefit especially from equal opportunity training in interviewing techniques, to help them:
 - a. recognise when they are making stereotyped assumptions about people;
 - b. apply a scoring method objectively;
 - c. prepare questions based on the person specification, and the information in the application form; and
 - d. avoid questions about hobbies, social activities or religious or cultural beliefs or practices, unless these are demonstrably relevant to the job.
- (iv) Employers are encouraged to make arrangements to keep application forms, and documents relating to each stage of the recruitment process, for 12 months, in case of any complaints about decisions or procedures. The documentation should include:
 - a. records of discussions and decisions by members of the selection panel; for example, on marking standards or interview questions;
 - b. notes taken by each member of the panel during the interviews; and
 - c. each panel member's marks at each stage of the process; for example, on the application form, any selection tests and each interview question.

- (v) Employers should remind gate, reception and personnel staff that it would be unlawful to treat people less favourably than others on the basis of their status, and should consider issuing written guidance to this effect.
- (vi) Evidence of good practice throughout the recruitment process will help avoid litigation, or end it at an early stage. Employers will be in a better position to show that they took reasonably practicable steps to prevent unlawful discrimination, should the matter reach the Commission, the Equal Opportunity Tribunal or an employment tribunal.

References

- (i) To make sure the selection decision is based strictly on the application form, the job description, the person specification, any selection tests and interviews, and is not influenced by other factors, such as potentially subjective judgments about a candidate by referees, employers should avoid making references part of the selection process. It is recommended that references should only be obtained, and circulated to members of the selection panel, after a selection decision has been reached.
- (ii) Employers will find it more useful to avoid asking for general character references, and to send referees copies of the job description and person specification instead, requesting evidence of the candidate's ability to meet the specific requirements of the job. This is more likely to ensure that the reference focuses on information that is relevant to the job.

Terms and conditions

- (i) It is unlawful for employers to discriminate on the ground of the status of a person, in the terms and conditions of work they offer,

including pay, hours of work, overtime, bonuses, annual leave, sick leave, and maternity and paternity leave.

- (ii) It is recommended that employers make sure their rules and requirements on access to any benefits, facilities or services, such as lunch vouchers, discount travel services or membership of a gym, are not discriminatory.
- (iii) When employees' cultural or religious practices, such as those expressed in dress codes, conflict with an employer's policies or workplace requirements, it is recommended that the employer consider whether it is practicable to vary or adapt these requirements. Employers should consult staff, trades unions and other workplace representatives on practical ways in which they can accommodate workers' needs.

IN THE COURSE OF EMPLOYMENT

Performance assessment

- (i) It is unlawful to discriminate against a worker, based on his or her status, in assessing his or her performance.
- (ii) To strengthen their legal defence in any proceedings alleging unlawful discrimination, employers need to make sure that performance assessments are not used to pass judgments about the person, based on assumptions and prejudices. Employers will find it helpful to base all assessments on actual performance of specific tasks, measured by impartial and objective standards. This is particularly important when performance is linked to promotion or a benefit, such as pay or bonuses.
- (iii) It is recommended that training courses for managers on the equal

opportunity policy should include guidance on objective performance assessment. Equally, any training on assessment methods should take the organisation's equal opportunity policy fully into account.

Training and development

- (i) It is unlawful for employers to discriminate against a person, based on his or her status, in the arrangements they make for training, transfer and other development opportunities, or by deliberately refusing to make these available to all workers.
- (ii) Employers should consider adopting a policy on training, transfer and development, linked to the organisation's business plan (if it has one), and based on regularly updated audits of workers' skills and training needs. The policy should describe the range of development opportunities open to all staff, such as mentoring and shadowing schemes (if any), and to any support its staff will receive.
- (iii) To help avoid claims of unlawful discrimination, it is recommended that employers ensure that managers and supervisors responsible for selecting workers for training and other development opportunities are themselves trained to:
 - a. understand the legal responsibilities of the employer under the Act, and how the organisation's equal opportunity policy applies to matters of training and career development;
 - b. recognise workers' training needs, regardless of their status;
 - c. encourage all workers to apply for training and other development opportunities, so that no one is overlooked as a result of subjective judgments about their abilities by reason of their appurtenance to a particular status;
 - d. advertise all training and other development opportunities as widely as possible throughout the organisation, for example, through notice boards and internal websites.

Promotion

- (i) It is unlawful for employers to discriminate against workers in the way they make opportunities for promotion available or by refusing or deliberately failing to make them available.
- (ii) It is recommended that all promotion opportunities, including development opportunities that could lead to permanent promotion, should be advertised widely throughout the organisation, and filled in line with the organisation's equal opportunity and recruitment policies and procedures. This would mean using the organisation's standard job application form (if it has one) to fill all promotion and development opportunities, and making sure that selection is based strictly on demonstrable merit.
- (iii) Employers should avoid by-passing their recruitment procedures, unless a temporary promotion is absolutely necessary. In this case, the promotion should last no longer than the time needed to fill the post permanently, and openly, through the organisation's recruitment procedures.
- (iv) Employers will find it helpful to build the following guidelines into their policies and procedures for promotion and career development.
 - a. Where posts are advertised internally and externally, the same selection procedures and criteria should apply to both internal and external candidates. Discussions about candidates, particularly internal candidates, should not be based on rumours or unsubstantiated opinions.
 - b. As far as possible, selection decisions based on performance assessments should be endorsed by the organisation's personnel department (if it has one).
 - c. No assumptions should be made about the eligibility of staff, based on their grade, current post or appurtenance to a

particular status, and information about all promotion and other development opportunities that could lead to permanent promotion, such as deputising and secondments, should be communicated to all staff; restricting applications for promotion and other development opportunities to staff at a particular grade or level could result in indirect discrimination.

- d. Records should be kept of who is taking up different types of opportunities, and who is not; who is successful, and who is not.

Discipline and grievance

- (i) Employers must not discriminate in the way they respond to grievances, or invoke disciplinary measures. Disciplinary action is an extreme measure and should be taken fairly and consistently, regardless of the worker's status. Equally, allegations of discrimination must always be taken seriously and investigated promptly, not dismissed as 'oversensitivity' on a worker's part.
- (ii) All employers (irrespective of their size) must comply with statutory procedures for dealing with dismissal, disciplinary action and grievances in the workplace pursuant to the provisions of the Employment Rights Act 2008.
- (iii) It is in the interests of employers to attempt, wherever possible, to resolve grievances as they arise, and before they become major problems, through mediation. Grievance procedures can provide an open and fair way for complainants to make their concerns known, and for their grievances to be resolved quickly, without having to bring legal proceedings.
- (iv) It is recommended that employers monitor the number of workers who have brought grievances or been subjected to disciplinary action, and the outcomes of each case. It will also be useful to be able to match the data with information about the workers' grades, their managers and the areas of the organisation where they work.

- (v) If an investigation into a grievance or disciplinary matter finds evidence that the grievance was brought in bad faith, for example, to get another worker into trouble, the employer should take steps to make sure this does not happen again, either by recommending training or taking disciplinary action against the worker in question, as appropriate. However, employers must be careful not to punish someone for having made a complaint that proves to have been unfounded, but that was made in good faith.

Dismissal and termination of employment

- (i) It is unlawful for employers to discriminate against workers based on their status, by dismissing them or subjecting them to any other detriment. Dismissal includes termination of a contract by the employer (with or without notice), and non-renewal or expiry of a fixed-term contract, unless a statutory exception applies.
- (ii) It is recommended that employers make sure the criteria they use for dismissal (including redundancies) are not indirectly discriminatory, and that their procedures are fair and objective, and are followed consistently.
- (iii) Dismissal or any other detriment – such as demotion or compulsory transfer or punitive transfer – must always be fair and reasonable. Employers should make sure such decisions are based on a worker's actual performance or conduct during his or her employment, as reflected in any performance assessments. Any tests designed to select people for redundancy should be objective, and fairly and consistently administered. Wherever possible, employers should consult their workers, and trade unions and other workplace representatives (if any), about proposed redundancies, and the criteria for selection.

- (iv) Staff responsible for selecting workers for dismissal should be instructed not to discriminate on the basis of the status of the workers, and trained in the organisation's equal opportunity policy, and how it might apply to dismissal and redundancy.
- (v) Workers who are eligible for redeployment should be given the chance to show they have the skills or abilities required in alternative jobs. Employers should use their normal recruitment policy to fill these jobs.
- (vi) It is recommended that employers monitor all dismissals. They will find it useful to be able to match this data with information about the workers' grades, the areas of the organisation where they work, and their managers.
- (vii) Employers will find it helpful to:
 - a. make sure the decision to dismiss is not made by one individual, but, as far as possible, in discussion with a senior member of staff in the personnel department (if the organisation has one);
 - b. keep written records of all decisions to dismiss; and
 - c. encourage leavers to give feedback about their employment.

Equal Opportunities Commission

APPENDIX

Sample equal opportunity policy in employment

[organisation's name] is committed to building an organisation that makes full use of the talents, skills, experience, competence, desire and willingness to work and different cultural perspectives available in a multi-racial, multi-ethnic, multi-cultural and multi-lingual society, and where people feel they are respected and valued, and can achieve their potential regardless of their status, that is, their age, caste, colour, creed, ethnic origin, impairment, marital status, place of origin, political opinion, race, sex or sexual orientation.

[organisation's name] will follow the recommendations of the Equal Opportunities Commission as set forth in its Guidelines on Application of an Equal Opportunity Policy at Work in all its employment policies, procedures and practices.

The aims of this policy are to ensure that:

- no one receives less favourable treatment, by reason of his or her age, caste, colour, creed, ethnic origin, impairment, marital status, place of origin, political opinion, race, sex or sexual orientation, or is disadvantaged by any conditions, requirements, provisions, criteria, procedures or practices that cannot be justified on any or more of the above-mentioned grounds, or victimised for taking action against the employer for discrimination or for assisting a fellow employee in taking such an action;
- opportunities for employment, training and promotion are open to all candidates irrespective of their status, that is, their age, caste, colour, creed, ethnic origin, impairment, marital status, place of origin, political opinion, race, sex or sexual orientation; and
- selection for employment, promotion, transfer and training, and access to benefits, facilities and services, will be fair and equitable,

and based solely on merit and not on the status of the employees or prospective employees, that is, age, caste, colour, creed, ethnic origin, impairment, marital status, place of origin, political opinion, race, sex or sexual orientation.

This policy applies to all aspects of employment, from recruitment to termination of employment.

We will take the following steps to put the policy into practice and implement it:

- The policy will be a priority for the organisation.
- [named senior manager/manager and job title] will be responsible for the day-to-day operation of the policy.
- The policy will be communicated to all workers and job applicants, and will be placed on the organisation's website.
- Workers and their representatives and trade unions (if any) will be consulted regularly about the policy, and about related action plans and strategies.
- All workers will be trained on the policy; on their rights and responsibilities under the policy, and on how the policy will affect the way they carry out their duties and also what constitutes acceptable and unacceptable conduct in the organisation.
- Managers and workers in key decision-making areas will be trained on the discriminatory effects that certain provisions, practices, requirements, conditions, and criteria can have on workers, and the importance of being able to justify decisions to apply them.
- Complaints about discrimination in the course of employment will be regarded seriously, and may result in disciplinary sanctions, and even dismissal.
- Opportunities for employment, promotion, transfer and training will be advertised widely, internally and externally, and, save where a

genuine occupational requirement or statutory exception applies, all applicants will be welcomed, irrespective of their status, that is, their age, caste, colour, creed, ethnic origin, impairment, marital status, place of origin, political opinion, race, sex or sexual orientation.

- All workers will be encouraged to develop their skills and qualifications, and to take advantage of promotion and development opportunities in the organisation.
- Selection criteria will be entirely related to the job or training opportunity.
- Grievances, disciplinary action, performance assessment, and terminations of employment, for whatever reason, will also be monitored.
- Requirements, conditions, provisions, criteria and practices will be reviewed regularly, in the light of the monitoring results, and revised, if they are found to, or might, discriminate.
- An equal opportunities action plan will be drawn up, with equality targets and timetables, to show what steps the organisation plans to take to achieve equality of opportunity.
- The effectiveness of the policy and the plan will be monitored regularly. A report on progress will be produced each year, and published via the website, the staff newsletter, notice boards, and the annual report (if any).

This policy has been endorsed by [an appropriate senior person] and has the full support of the management/board.

The policy was approved on [insert date], following consultation with senior managers, workers, workers' representatives and trade unions (if any).

Overall responsibility for the effectiveness of this policy lies with [an appropriate senior person].

All staff are responsible for familiarising themselves with this policy. Managers must also make sure their workers know about, and follow, the policy.

For further information, please contact [insert name and details].

mem sans pou tou

సమాన అవకాశాలు
samāna avakāśālu

平等机会
ping deng ji hui

சம வாய்ப்புக்கள்
sama vaayppukkal

یکساں مواقع
yaksan mawaqé

समान अवसर
samaana avsar

समान संधी
samāna sandhī

égalité des chances

समान अवसर
samāna avsar

equal opportunities



equal opportunities

समान अवसर
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