

## 2. Discrimination



BETTER WORK

*Discrimination includes any distinction based on race, colour, sex, religion, political opinion, national extraction or social origin that results in unequal treatment. Other grounds of discrimination may be covered under national law, such as disability, HIV status, age and sexual orientation. Exceptional distinctions are allowed if they are necessary and inherent requirements of a particular job, but this is rare. In addition, some categories of workers may receive special protection under international law (e.g., maternity protection). National laws also may seek to remedy the effects of past discrimination, for example, by offering preferential treatment to women in hiring.*

*Discrimination may be direct or indirect, and it does not have to be intentional. Practices that appear neutral but result in unequal treatment of people with certain characteristics are considered indirect discrimination. Harassment (behaviour that violates the recipient's dignity, and creates an intimidating, hostile or humiliating working environment) also is considered discrimination when it is based on discriminatory grounds. All workers must be free from discrimination, including migrants, home-based workers, and job applicants.*

### Common grounds for discrimination

#### 2.1 Race and Origin

**Race** refers to the ethnic group that people inherit from their parents, and **national extraction** refers to their place of birth, ancestry or foreign origin. **Social origin** means caste or social status. Groups that are most vulnerable to discrimination on these grounds are ethnic minorities, indigenous and tribal people, and migrant workers.

#### 2.2. Religion and Political Opinion

Discrimination on grounds of religion or political opinion may be less obvious than for other grounds. Political opinion includes party affiliation or participation in political activities. The prohibition of discrimination on religious grounds encompasses religious practices such as prayer, dietary and clothing requirements, and observation of religious holy days. In general, workers should be free to abide by legitimate faith-based rules, tenets or practices without negative repercussions at work, so long as this does not disproportionately impact the requirements of the job or operational needs.

#### 2.3 Gender

Sex discrimination includes distinctions based on biological characteristics (sex), as well as unequal treatment arising from socially constructed roles assigned to a particular sex (gender). Distinctions based on pregnancy that are not necessary to protect the health of the mother and child are discriminatory, because they by definition only affect women. Distinctions based on marital or family status may be discriminatory if they apply to or disproportionately impact workers of one sex. Marital or family status also may be protected under national law. Measures aimed at protecting women based on stereotypical assumptions about their capabilities and their role in society are discriminatory.

Sexual harassment is any physical, verbal or non-verbal conduct of a sexual nature affecting the dignity of women or men, which is unwelcome, unreasonable and offensive to the recipient. Sexual harassment in the workplace arises when workers believe that their reaction to the conduct is a condition of employment or that it will affect decisions regarding

their job. Sexual harassment also can arise from conduct that creates an intimidating, hostile or humiliating working environment.

Other common grounds for discrimination include **sexual orientation, real or perceived HIV status, age** and **disability**. These grounds are not covered under the ILO conventions, so they are only included in the compliance needs assessment if protected under national law. Termination of workers who have reached compulsory retirement age is not considered discriminatory.

## Types of employer action that can lead to non-compliance

- Considering race, origin, religion, political opinion or gender when making decisions regarding hiring, training, promotion, termination or redundancy.
- Including references to an applicant's gender, race, religion or other personal characteristics in job announcements, application forms or interviews (unless authorized by national law).
- Providing different working conditions (e.g., working hours, leave, safety and health measures, social security or other benefits) or pay (including minimum wages, overtime, bonuses, allowances, in-kind benefits, etc.) to workers based on discriminatory grounds.
- Asking job applicants or workers to undergo pregnancy tests (except as strictly required by health and safety laws) or asking them directly or indirectly about their HIV status. (Taking legally required measures to help workers with AIDS-related illnesses is not discriminatory.)
- Failing to hire disabled workers, adapt the workplace for people with disabilities (e.g., wheelchair access), or take steps to enable workers with disabilities to retain their work, when required by national law.

## Key action points for employers

- Develop a policy to promote equal treatment and prevent harassment in the workplace, and make sure that it is accessible and clearly communicated to management, supervisors and workers in languages understood by all. Ensure that the policy includes measures to prevent and address sexual harassment.
- Ensure that job advertisements, job descriptions and applications do not refer to race, religion, gender, etc. (except when legal exceptions apply).
- Ensure that decisions on hiring, working conditions, pay, benefits, training, promotion, termination, and redundancy are not made on discriminatory grounds.
- Monitor the workplace for any form of harassment, and where it is found, act quickly to address it.
- Ensure that workers are not asked about or required to undergo HIV or pregnancy testing as a condition of employment.
- Take legally required measures to help workers with AIDS-related illnesses.
- Take steps to enable workers with disabilities to retain their jobs; hire and make accommodations for physically disabled persons when required by national law.
- Comply with national laws that prohibit discrimination against workers based on their age or sexual orientation.

## Key references

ILO Convention 100 and Recommendation 90 on Equal Remuneration, and ILO Convention 111 and Recommendation 111 on Discrimination (Employment and Occupation)