



(COP 20) NON-DISCRIMINATION

A *Definitions and applicability*

Discrimination is where people are treated differently because of certain characteristics – such as race, ethnicity, caste, national origin, religion, disability, gender, sexual orientation, union membership, political affiliation, marital status, pregnancy status, physical appearance, HIV status, or age, or any other applicable prohibited basis – which results in the impairment of equality of opportunity and treatment.

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 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 nationals, non-nationals, migrants, home-based workers, and job applicants.

Source:

- International Labour Organisation (ILO) – Workplace Discrimination
www.ilo.org/global/Themes/Equality_and_Discrimination/WorkplaceDiscrimination/lang--en/index.htm
- International Labour Organisation (ILO) Better Work - Guidance Sheet 2: Discrimination (2009)
<http://betterwork.com/global/wp-content/uploads/2-Discrimination.pdf>

The **Discrimination** section of the COP is applicable to all Facilities with employees.

B *Issue background*

Discrimination in occupation and employment takes many forms and occurs in all kinds of work settings. It can occur in developed or developing countries, in rural or city settings, and in low or high technology workplaces. It may affect people gaining access to employment or particular occupations. Or once at work, it can result in different treatment of employees in their responsibilities, conditions, training, promotion, or job security. Ultimately, discrimination creates and reinforces inequalities and is a breach of human rights.

Non-discrimination means that employees are selected on the basis of their ability to do a job, without exclusion or preference on any other grounds. Distinctions based strictly on the inherent requirements of particular work are not discrimination.

Globally, women continue to be the largest discriminated group according to International Labour Organisation (ILO) reports. Gender disparities are evident in labour force participation rates, unemployment rates, remuneration and the types of jobs performed.

Other forms of discrimination are also being recognised, such as unfair treatment of both young and older persons, people with disabilities and those with HIV/AIDS. However, monitoring levels of discrimination can be hampered by a lack of available data. Privacy protection and ideological or political barriers often prevent the collection of data on certain groups.

For employers, discrimination can be difficult to identify in practice. Discriminatory practices may be direct, such as when laws, rules or customs explicitly cite a reason such as sex or race to deny equal opportunity. However, indirect discrimination is much more common and consequently more difficult to pinpoint. It arises where rules, practices or attitudes have the appearance of being neutral but in fact lead to exclusions or preferential treatment. Harassment is also considered discrimination when it is based on discriminatory grounds. Where discrimination exists informally or is culturally ingrained, it requires a conscious effort from employers to identify and address in a purposeful way.

C *Key regulations*

INTERNATIONAL STANDARDS

Non-discrimination principles are enshrined in the Universal Declaration of Human Rights (1948). Article 2 states that everyone is entitled to the rights and freedoms of the Declaration, without distinction of any kind. Article 7 states that all are equal before the law and are entitled to equal protection against any discrimination in violation of the Declaration. Article 23 states that everyone has the right to equal pay for equal work.

These rights have also been defined in international labour law. The International Labour Organisation (ILO), a tripartite United Nations agency, has adopted two major conventions against discrimination:

- Convention 100 on Equal Remuneration (1951)
- Convention 111 on Discrimination (Employment and Occupation) (1958)

Conventions 100 and 111 are classified by the ILO as 'core conventions'. Additionally, elimination of discrimination in respect of employment and occupation is included in the 1998 Declaration of Fundamental Principles and Rights at Work. All ILO member countries are bound to promote and respect the principle of the Declaration, regardless of whether they have ratified the core conventions.

NATIONAL LAW

Most national labour and employment laws have provisions for non-discrimination. However there are jurisdictions where discrimination is legally permitted. In some countries, there is provision for 'positive' discrimination that seeks to redress historical inequalities such as gender or race. It is essential to be aware of all relevant legislation in the jurisdictions of operation.

D *Suggested implementation approach*

The Suggested implementation approach provides general guidance for implementing the mandatory requirements of the Code of Practices. The guidance is not normative and should be seen as a starting point for information and support.

COP 20.1: NO PRACTICE OR CONDONE ANY FORM OF DISCRIMINATION:

Members shall not practice or condone any form of discrimination in the workplace in terms of hiring, remuneration, overtime, access to training, promotion, termination or retirement based on race, ethnicity, caste, national origin, religion, disability, gender, sexual orientation, union membership, political affiliation, marital status, pregnancy status, physical appearance, HIV status, or age, or any other applicable prohibited basis, such that all individuals who are "Fit for Work" are accorded equal opportunities and are not discriminated against on the basis of factors unrelated to their ability to perform their job.

D *Suggested implementation approach*

Points to consider:

- Awareness of and responsibility for discrimination issues should be part of a senior management function, such as human resources.
- Risks of discrimination may be higher or more evident in certain countries, industry sectors or in particular occupations, or on particular issues such as union membership or pregnancy/maternity. Potential instances of discrimination will require careful responses that take account of local circumstances. See the RJC Risk Assessment Toolkit for a general risk assessment template that can be used, particularly for small to medium enterprises. Alternatively Members may use their own risk assessment process.
- Where appropriate to the size and nature of the organisation, develop policies and procedures to address any potential or actual discrimination issues. Make qualifications, skill and experience the basis for the recruitment, placement, training and advancement of staff at all levels.
- In larger organisations, grievance procedures can allow employees to raise complaints, and that handle disputes and appeals in a culturally appropriate and sensitive process.
- Provide diversity and anti-discrimination training, particularly in areas where discrimination is most likely to occur such as hiring and promotion practices. Use the training to raise awareness of formal and informal practices of discrimination.

CHECK:

- Are there risks of discrimination in your company and are senior management aware of these?
- Where risks are identified, do you have policies and procedures that can address discrimination risks?

E *Further information*

The following websites have further information on the issue of discrimination:

- International Finance Corporation (IFC) – Good Practice Note: Non-Discrimination and Equal Opportunity (2006)
www1.ifc.org/wps/wcm/connect/topics_ext_content/ifc_external_corporate_site/ifc+sustainability/publications/publications_gpn_nondiscrimination
- International Labour Organisation (ILO) – Equality and Discrimination
www.ilo.org/global/Themes/Equality_and_Discrimination/lang--en/index.htm
- International Labour Organisation (ILO) – Database on Conditions of Work and Employment Laws
www.ilo.org/dyn/travail/travmain.home
- International Labour Organisation (ILO) Better Work - Guidance Sheet 2: Discrimination (2009)
<http://betterwork.com/global/wp-content/uploads/2-Discrimination.pdf>
- Universal Declaration of Human Rights – Articles 2, 7 and 23
www.un.org/Overview/rights.html
- United Nations Global Compact - Principle 6 - Discrimination
www.unglobalcompact.org/AboutTheGC/TheTenPrinciples/principle6.html