

Guidelines for Employment Equality Policies in Enterprises

PREFACE

A national framework committee was established under the Programme for Prosperity and Fairness to promote equality at the level of the enterprise. The Framework Committee brings together Congress, IBEC, Department of Justice, Equality and Law Reform, Department of Finance, the Health Service Employers Agency, the Equal Opportunities Network and the Local Government Management Services Board. It is chaired and supported by the Equality Authority. It seeks to assist employers and trade unions to respond to the challenges arising from implementation of the Employment Equality Act and to promote equality in the workplace.

The Employment Equality Act 1998 came into force in October 1999. It addresses discrimination in the workplace and opens a new potential for equality in covering the nine grounds of gender, marital status, family status, sexual orientation, race, religion, disability, age and membership of the Traveller community.

The work of the Framework Committee has involved the setting up of clusters of enterprises and organisations working together on practical equality initiatives. It has involved projects to develop supports for enterprises and organisations seeking to put in place equality initiatives. The publication of these "Guidelines for Employment Equality Policies in Enterprises" is the first such project to come to fruition.

The guidelines are intended to provide encouragement, information and support to employers, trade unions and employees in the necessary preparation of employment equality policies. They are illustrated with examples of equality practices and are intended for all organisations, large or small, in the public or private sector.

The guidelines focus on an employment equality policy. A sexual harassment and harassment policy is also necessary for the workplace. This is not dealt with in this publication. The Equality Authority is preparing a code of practice on these issues which will assist. Future guidance will also be developed on an Equal Status Policy which relate to the Equal Status Act 2000.

The Framework Committee is grateful to Dr. Pauline Conroy of Ralaheen Ltd. for her work in researching and drafting this publication.



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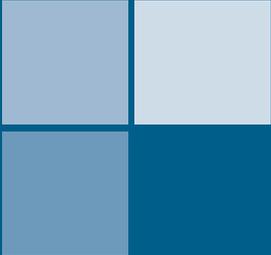


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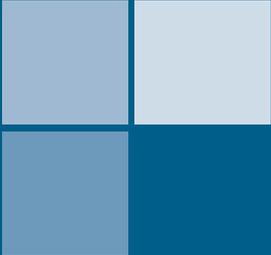


1. Ten Steps to Equality in the Enterprise

1. Ten Steps to Equality in the Enterprise

The foundation for equality in the workplace is the Employment Equality Act, 1998 which promotes equality and prohibits discrimination in the workplace across the nine grounds of gender, marital status, family status, age, disability, sexual orientation, race, religion and membership of the Traveller community. It is from this foundation that further steps can be taken to further equality and which should find expression in an employment equality policy.

1. *Agree and support* an equality committee and equality officer.
2. *Communicate* on employment equality with employees, clients, business contacts and service providers.
3. *Develop* equality of opportunity in recruitment and selection processes, including advertising.
4. *Include* positive actions as allowed under equality legislation for people with disabilities, women, members of the Traveller community and older worker, and accommodate employees with disabilities.
5. *Accommodate* diversity across the nine grounds and develop necessary workplace flexibilities.
6. *Build-in* equality into job orientation in the workplace.
7. *Integrate* the equality dimension into training, work experience and employment counselling opportunities.
8. *Develop* equality of opportunity in promotions and progression including job regrading or reclassification.
9. *Develop* a network with other enterprises and public bodies to ensure best practice on equality of opportunity in your organisation.
10. *Evaluate*, monitor and review your equality policies and practices.



2. Text for an Employment Equality Policy - Executive Summary

2. Text for an Employment Equality Policy - Executive Summary

An employment equality policy at enterprise level is a statement of commitment, identifying areas of activity to be developed to prevent discrimination and to promote equality. Text for an employment equality policy is set out below under the different chapter headings of this publication, where the points raised are dealt with in some detail.

Organising for Equality within the Enterprise - Chapter Three

Promoting an Equality Committee (page 13)

- "We support the operation of an equality committee."
- "The Equality Committee will be resourced."
- "We intend to join networks and mailing lists on equality issues which bring equality news into the workplace."

Appointing an Equality Officer (page 15)

- "We will resource a senior person to act as equality officer."

Promoting an Employment Equality Policy (page 15)

- "This policy will be communicated at every level and site of our organisation and to all free-lance workers, agents, suppliers and contracting agencies in a range of formats, through various media and languages."
- "We will include a section on equal opportunity in our Annual Report."

Training for Equality (page 16)

- "Training, information and briefings in relation to equality of opportunity will be provided to staff at all levels of the organisation on a phased basis. The training will be organised in a manner that is accessible to all employees."

Foundations for Employment Equality Practice (page 17)

- "We will develop practices and procedures on foot of this policy and we will monitor and report on their impact."
- "We will undertake an equality review in our enterprise and prepare an action plan on foot of this and maintain a monitoring system."

Knowing Your Workforce (page 18)

- "We comply with the Data Protection Act, 1988 in relation to information on employees and are committed to respect for individual privacy and confidentiality."
- "We are committed to undertaking voluntary studies to increase knowledge of the workforce with a view to improving equality policies."

Equal Opportunities in Recruitment and Advertising of Jobs - Chapter Four

Advertisements (page 20)

- “It is our policy to avoid displaying intentionally or unintentionally, advertisements or wordings that suggest, implicitly or explicitly, that jobs are not open to candidates from within all nine grounds of the Employment Equality Act, 1998.”
- “We will seek to ensure a creative approach to our advertising that affirms diversity and attracts the widest pool of applicants.”
- “We will keep our enterprise public relations and communications concepts under review to ensure it is aligned with our employment equality policy and to ensure their capacity to attract employees from within all the nine grounds.”
- “We will direct our recruitment to ensure that our advertisements reach candidates from all nine grounds of equality legislation.”

The Application Form (page 22)

- “The enterprise recruitment application forms will conform with the provisions of the Employment Equality Act and with best practice in equality of opportunity.”

Equality issues and Recruitment Agencies (page 22)

- “We will advise employment and recruitment agencies and agents of our organisation’s commitment and policy position on employment equality across the nine grounds of the equality legislation, of our positive action commitments, and of our shared duties with regard to the equality legislation.”

Recruitment Agencies and Migrant Workers (page 23)

- “We will ensure that employment and recruitment agencies and agents acting on our behalf follow practices and procedures that reflect the requirements of the Employment Equality Act and the standards recommended by the ILO.”

Equality and Website Managers (page 23)

- “The IT technical section, webmaster, and web host agent and their operations which fall within the ambit of the Employment Equality Act, 1998 will be included in the development of employment equality policies in relation to recruitment and advertising of jobs and in relation to their accessibility to people with disabilities.”

Communicating job opportunities to people with disabilities, older workers, women and the Traveller community (page 24)

- “We will put in place a procedure to encourage older persons, members of the Traveller

community, people with disabilities or women/men to submit job applications and encourage agencies and bodies working with them to do likewise.”

- “We will be put in place adjustments to accommodate the recruitment and integration of persons with disabilities into this enterprise.”

Equal Opportunities in the Interview Process - Chapter Five

Interviews and Interview Boards (page 28)

- “We will conduct recruitment interviews on the basis of ability, so that all candidates of equal merit have an equitable opportunity to compete.”

Guidance and Briefing for Interviewing (page 28)

- We will provide interviewers with detailed guidance in relation to non-discrimination and equal opportunity issues in relation to recruitment.”

Conducting the Interviews (page 28)

- “We are committed to an agreed objective system of rating candidates for recruitment by experience, skill, qualifications, or job record as appropriate or relevant, or other objective system.”

Diversifying Interview Boards (page 29)

- “We will strive to ensure a balance of persons from within the nine grounds, and to achieve a gender balance on the interview board.”
- “We will provide all board members with briefings on the legislation and equality issues.”

The Interview Process (page 30)

- “We will conduct relevant statistical checks, where feasible, of candidates at different phases of the interview process, for the success rates of candidates of different grounds in a manner that does not interfere with the specific interview process.”

Adjustments for Candidates with Disabilities (page 30)

- “ We will make appropriate adjustments to the recruitment process to enable candidates with and without disabilities to compete equally for jobs.”
- “ We will identify contact points to ensure we have ongoing access to the knowledge required to make reasonable accommodation for people with disabilities.”

Positive Action on Grounds of Gender, Age, Disability and Membership of the Traveller community in Recruitment (page 31)

- “We are committed to undertaking positive actions on the grounds of gender, disability, membership of the Traveller Community, and for older workers over 50 to promote the employment and secure the integration of such persons into the workplace.”

Medical Tests (page 32)

- “If a medical test is found to be necessary, we will explore the outcomes with the employee, secure further medical opinion if necessary, implement a safety assessment of the workplace if needed and make reasonable accommodation.”

Equality of Opportunity in Job Orientation and Job Induction - Chapter Six

Job Orientation (page 34)

- “We will introduce a pro-active equality approach in job orientation programmes for new recruits and undertake awareness raising and equality skills training activities with existing staff.”

Introducing equality and non-discrimination awareness in the workplace (page 34)

- “We are committed to identifying and valuing difference in the staff handbook to take account of the promotion of equality of opportunity on the grounds of race, gender, age, disability, sexual orientation, family and marital status, religious belief and membership of the Traveller community.”

Involving supervisors and line managers (page 35)

- “We will develop information, awareness sessions and resources on equality policies for front line managerial and supervisory staff and all staff.”
- “We will encourage front line managerial and supervisory staff to contact senior staff if they are uncertain or unsure as to whether a situation constitutes equal treatment or discriminatory treatment.”

Adjustments for employees with disabilities (page 36)

- “We will identify a contact point (equality officer) to explore necessary adjustments with employees with disabilities, to access any necessary advice or support, and to secure implementation of such adjustments.”
- “Co-employees and supervisors will be provided with information to increase their understanding of adaptations and adjustments required in the process of recruitment and continued employment of employees with disabilities.”

Equality of Opportunity in Career Promotion and Progression - Chapter Seven

Maintaining Records and Reviewing Files (page 38)

- “It is our policy to encourage promotion and progression of staff within the enterprise regardless of their gender, marital status, family status, religious belief, race, age, sexual orientation, disability or membership of the Traveller community. The enterprise is committed to monitoring the promotion process where feasible to assess equality of opportunity in this area.”

Training and work experience (page 38)

- “We will advertise enrolment for training, work experience and employment counselling opportunities so that they are known to and understood as open, available and accessible to all qualified employees, full-time and part-time, including all nine grounds named in the Employment Equality Act, 1998.”
- “We will ensure that all training, work experience and employment counselling opportunities are open, available and accessible to full-time and part-time employees, including all grounds named in the Employment Equality Act.”
- “Applications are welcome from employees who have not enrolled on previous training days. Employees with disabilities, women and older employees and Traveller Community employees will be encouraged to apply and enrol for training opportunities.”

Work-Life Balance (page 40)

- “We will enhance the opportunities to reconcile work-life balance among our employees.”
- “Employees who avail of family friendly work arrangements will not be discriminated against and will be treated equally with other employees.”

Job-Appraisal (page 41)

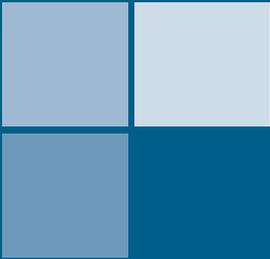
- “Job-appraisals will be conducted on a basis which is non-discriminatory to all employees.”
- “Those involved in conducting job appraisals will be trained in relation to compliance with the Employment Equality Act.”

Equal Pay (page 41)

- “The principle and practice of equal pay will be respected and kept under review and will be a feature of any collective agreements.”

Redundancies, Dismissal and Non-discrimination (page 41)

- “We will keep redundancy and dismissal procedures under review to ensure that no direct or indirect discrimination on any of the nine grounds exists. This ongoing review will be carried out in a partnership manner in consultation with employee/ trade union representatives.”
- “We shall take steps, where appropriate, that employees, for whom English is not their first language, understand all disciplinary and related procedures.”



3. Organising for Equality within the Enterprise

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3.1 What is an Employment Equality Policy?

The Employment Equality Act, 1998 promotes equality of opportunity and prohibits discrimination in the workplace across the nine grounds of gender, marital status, family status, age, disability, sexual orientation, race, religion, and membership of the Traveller community. Employers need to have policies, practices and procedures in place to prevent discrimination and should have policies, practices and procedures to promote equality.

An employment equality policy at enterprise level is a statement of commitment identifying areas of activity to be developed to prevent discrimination and to promote equality. It covers the following areas:

- Organising the enterprise to progress equality issues (chapter 3).
- Approaches to recruitment and the advertising of jobs (chapter 4).
- Approaches to the interview process (chapter 5).
- Approaches to job orientation and job induction (chapter 6).
- Approaches to career promotion and progression (chapter 7).

An employment equality policy is not an end in itself, but a means to an end. It provides the foundation for a workplace culture of equality and a workplace characterised by equality outcomes. However, it requires practices and procedures to be implemented if the potential of a policy is to be realised.

3.2 Why Prepare An Employment Equality Policy ?

Preparing an employment equality policy in a private company or public service body makes good sense nowadays. There are five main reasons why:

- An employment equality policy can assist compliance and provide a foundation for the practices and procedures required for compliance. Compliance with the provisions of the Employment Equality Act, 1998, by eliminating discrimination in the workplace, is essential for all workplaces.
- It is good business to promote equal opportunities in the workplace and reflect the diversity of situations and identities of employees in Ireland today. This allows access to a wider pool of labour and expertise. The endorsement of enterprise equality policies by a joint management – trade union/employee committee sends out a sign that the enterprise is open to diversity.

- Equal opportunities policies can operate as a signal to clients, suppliers and sub-contractors that the enterprise is open-minded to equality and diversity values. In this regard employment equality policies can generate positive responses from these groups.
- A more relaxed workplace atmosphere and higher morale can follow from reassurance and adjustments to take account of the different marital and family circumstances, abilities/disabilities, ethnic or religious origins, age, gender or sexual orientations of staff.
- Paid employment can be an important passport to participation in social and economic life. The opportunity for paid employment is much sought after by many who, in the past, were not able, not invited not considered or not allowed to join the workforce. Equality in the workplace contributes to a more equal, fairer and cohesive society.
- Equality in the workplace enhances productivity and profit for the enterprise.

Outcome of effective anti-discrimination policy and procedures

- reduces the likelihood of misunderstanding and confusion about the organisation's policy and procedures;
- reduces the likelihood of employer liability;
- provides a more harmonious work environment; and
- greater productivity.

Source: Australian Human rights and Equal Opportunity Commission
Information for Employers

3.3 Promoting an Equality Committee

An equality committee brings together representatives of employers and employee/trade union representatives, on a voluntary basis, to develop and implement equal opportunities policies and practices. An equality committee at enterprise level can prepare and develop an equality policy.

In large organisations or sectors, a committee may be relatively formal in structure, with balanced representation from various divisions and sections. The make-up of the committee will depend on the size and nature of the enterprise. Among the activities of an equality committee which can be included in its terms of reference are:

- Preparing an employment equality policy;
- Monitoring equality in the workplace;
- Identifying and addressing equality issues arising under the nine grounds;
- Promoting positive actions;
- Preparing awareness days and briefings with speakers on equality;
- Distributing literature on equal opportunities from employer and trade union representative bodies and from the Equality Authority;
- Building an ethos of equality in the workplace;
- Promoting the commitment of all management and employees to equality;
- Establishing systems to review practice and procedure for their contribution to equality outcomes.

Text for an employment equality policy:

- *"We support the operation of an equality committee,"*
- *"The Equality Committee will be resourced,"*
- *"We intend to join networks and mailing lists on equality issues which bring equality news into the workplace."*

3.4 Appointing an Equality Officer

An equality officer should be a person of seniority who is given responsibility for equality issues. The wide range and depth of actions and measures, which arise from equality issues, have prompted organisations to appoint dedicated equality staff who work alongside or within the Personnel or Human Resources department or within Equality Offices.

The equality officer could:

- Convene the employment equality committee;
- Implement equality-related actions;
- Take up issues related to equality;
- Organise equality training and awareness;
- Build a knowledge base in relation to the reasonable accommodation of employees with disabilities;
- Arrange the distribution of literature on equal opportunities from employer and employee/trade union representative bodies;
- Prepare an 'equal opportunities' website link; and
- Monitor the implementation of the employment equality policy.

Text for an employment equality policy:

- *"We will resource a senior person to act as equality officer."*

3.5 How to Prepare an Employment Equality Policy

Partnership, consultation and research are key elements in the preparation of an employment equality policy. Partnership involves the active collaboration of management and employee / trade union representatives in the preparation of the policy. Consultation involves a hearing for the perspective and analysis of all employees in drawing up a policy. Research involves an exploration of good practice elsewhere so that high standards can be realised on the basis of experience in other enterprises.

The formation of an equality committee provides the most appropriate forum to design the employment equality policy and to promote its active implementation. The appointment of an equality officer ensures the opportunity to adequately resource and inform the committee in this work, to organise necessary consultation and to monitor the implementation of the policy.

3.6 Promoting an Employment Equality Policy

The communication of an employment equality policy throughout an organisation and its customer and supplier circuits is considered a priority. Reaching all sections, divisions, levels, sites and occupational grades of an organisation can be quite a challenge, but is very important.

Communications endorsed by broad-based partners or by a high level of decision-making in an enterprise are likely to carry greater weight. Dublin Corporation's *Code of Practice for the Employment of People with Disabilities* was endorsed by both its Disability Committee and Personnel Officer. The *Code* was published in English and Irish and in large and standard print size.

Where different languages are spoken in a workplace, communications policy on employment equality should address this issue. Different formats are also required to ensure the policy is accessible to all.

Text for an employment equality policy:

- *"The employment equality policy will be communicated at every level and site of our*

organisation and to all free-lance workers, agents, suppliers and contracting agencies in a range of formats, through various media and languages.”

- *“We will include a section on equal opportunity in our annual report.”*

3.7 Training for Equality

Many enterprises, professional groups and trade unions have been investing in the development of equality through special training. This investment has taken the form of training days or half days, awareness programmes in relation to Employment Equality legislation, attendance by staff at external or regional awareness days, and briefing notes in internal newsletters and notices.

Some training sessions address one ground of the Employment Equality Act in particular; while others address all nine grounds and the implications for employers or employees of the new approach to equality which underpins the legislation. A distinction can be made between general awareness training in employment equality issues and specific skills training to handle equality themes.

Text for an employment equality policy:

- *“Training, information and briefings in relation to equality of opportunity will be provided to staff at all levels of the organisation on a phased basis. The training will be organised in a manner that is accessible to all employees.”*

Disabled Persons rights

In 1997, trade unions, members of the Irish Congress of Trade Unions agreed to implement strategic plans aimed at deeper inclusion of people with disabilities in the workplace and in trade unions. Many officials undertook awareness training. Congress published a Resource Pack to assist trade union officials to implement the strategic plans.

Source: Irish Congress of Trade Unions

3.8 Foundations for Employment Equality Practice

An employment equality policy can only serve as a foundation. Practices and procedures need to be implemented to realise its potential and to secure its benefits. Responsibilities need to be allocated to ensure that the policy does have an impact. The naming of an equality officer is a valuable step in this regard. It is important that initiatives are taken on foot of the policy and that these are monitored for impact and reported on.

Worthwhile reviews and action plans are a valuable tool in this regard. Responding to the growing diversity and needs in the Irish workforce is one of the factors prompting interest in workplace reviews. Workplace reviews provide an opportunity to prepare a profile of some of the specific circumstances of employees that can be enhanced by new policies. Reviews can be accompanied by a survey or study and should lead to a plan of action to address equality.

Under the Employment Equality Act, 1998 the Equality Authority is empowered to initiate and undertake equality reviews and action plans on its own initiative. It can also invite enterprises to undertake equality reviews and prepare action plans. This is a strategic area of its work and it is being promoted on a partnership basis between employer and employee representatives. Equality reviews would explore policy, procedures, practices and perceptions within the enterprise to assess their contribution to equality customers and to building a culture of equality. An equality action plan establishes goals on foot of a review and sets out actions to achieve these goals.

A programme of grants is being made available to all types of small, medium or large enterprises, private or public, commercial or non-commercial, manufacturing or service to undertake voluntary equality reviews. A panel of expert equality auditors has been trained to be available to undertake reviews across the nine grounds of the Employment Equality Act under this scheme.

Text for an employment equality policy:

- *“We will develop practices and procedures on foot of this policy and we will monitor and report on their impact.”*
- *“We will undertake, on our own initiative, an equality review in our enterprise and prepare an equality action plan on foot of this and maintain a monitoring system.”*

3.9 Knowing your Workforce

Factual knowledge about the workforce is important for equal opportunities. Collecting data through studies, surveys and enquiries builds the knowledge base for sound long-term equality policy. The analysis drawn from such studies inform both employers and trade union/employee representatives of the presence in the workforce of groups of workers who are named in the *Employment Equality Act, 1998*. Vigilance and sensitivity is necessary when gathering data for monitoring purposes, lest the monitoring itself is seen as discriminatory. The equality committee could play a valuable role in this area.

The Data Protection Act, 1988 was passed to deal with privacy issues arising from the increasing amount of information kept on computer about individuals. In giving new rights to individuals, the Act also puts new responsibilities on those who keep personal information on computers.

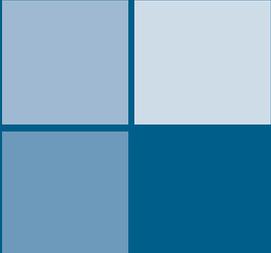
The Act protects data kept on computer about people. A data controller is the person who keeps or processes information about living people on any kind of computer or word processor. Every data controller is bound by Data Protection requirements.

In addition, some categories of data controller are required to register with the Office of the Data Protection Commissioner. These include data controllers who keep personal data relating to:

- Racial origin;
- Political opinion;
- Religious or other beliefs;
- Physical or mental health;
- Sexual life; and
- Criminal convictions.

Text for an employment equality policy:

- *"We comply with the Data Protection Act, 1988 in relation to information on employees and are committed to respect for individual privacy and confidentiality."*
- *"We are committed to undertaking voluntary studies to increase knowledge of the workforce with a view to improving equality policies."*



4. Equality of Opportunity in Recruitment and Advertising of Jobs

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4.1 Advertisements

Advertisements that indicate an intent to discriminate or that might reasonably be understood as indicating such an intention are prohibited under the Employment Equality Act, 1998. Advertisements can appear on notice boards, in bulletins, TV, newspaper, radio, on buses, special printed supplements, and on the Web. All of these locations are in the public domain and the advertisements placed there are covered by the *Employment Equality Act, 1998*.

The Equality Authority -v- Ryanair

File no DEC/2000/14 of 29.12.2000

The Equality Authority referred a case to the Office of the Director of Equality Investigations concerning the company Ryanair, stating that a recruitment advertisement stipulated that the respondent needed *"a young and dynamic professional..."* and that *"the ideal candidate will be young, dynamic..."* The Equality Authority complained that this amounted to discrimination on the age ground.

It was the view of the Equality Officer that the use of the word "young" as a requirement in this advertisement constituted discrimination on the age ground.

As a consequence of the finding of discrimination on the age ground, Ryanair was ordered to pay £8,000 to the Equality Authority as compensation for the effects of discrimination and to take a specific course of action including a comprehensive review of its equal opportunities policies to ensure that the policies are fully compliant with equality legislation.

Job seekers who are returning to or entering the labour market for the first time can be daunted by the job requirements and experience specified for posts that otherwise sound relatively undemanding. It is advisable to verify that the qualifications or skills or experience are actually needed to perform the job effectively so that potential candidates are not precluded from applying. All job requirements should be job relevant. This approach will ensure that a wider pool of candidates, including non-traditional job holders, will consider themselves for posts. It will further ensure that candidates of a particular group or category are not being screened out of the employment process by the requirement of qualifications that are not essential for the job in question.

Advertisements accompanied by photographs or images can reflect negative stereotypes and can communicate an intent to discriminate. They may preclude potential candidates from applying. On the other hand, the creative use of photography and imagery can affirm diversity and attract a broader range of applicants.

Text for an employment equality policy:

- *“It is our policy to avoid displaying intentionally or unintentionally, advertisements or wordings that suggest, implicitly or explicitly, that jobs are not open to candidates from within all nine grounds of the Employment Equality Act, 1998.”*
- *“We will seek to ensure a creative approach to our advertising that affirms diversity and attracts the widest pool of applicants.”*
- *“We will keep our enterprise public relations and communications concepts under review to ensure it is aligned with our employment equality policy and to ensure their capacity to attract employees from within the nine grounds.”*
- *“We will direct our recruitment to ensure that our advertisements reach candidates from all nine grounds of equality legislation.”*

Ways of saying you are an Equal Opportunities Employer

The National Union of Journalists is an equal opportunities employer.

The Department of the Taoiseach is committed to a policy of Equal Opportunity.

The Combat Poverty Agency is an equal opportunities employer and operates a people-friendly employment policy.

Allied Irish Banks Group is an equal opportunities employer and welcomes applications from all sections of the community.

The European Commission takes great care to avoid any form of discrimination in its recruitment procedures.

The Northside Partnership is an equal opportunities employer and is Positive to Disability.

Source: The Irish Times April 20 2001

4.2 The Application Form

Job advertisements often invite candidates to seek an application form. Existing application forms have to be assessed against the requirements of the Employment Equality Act, 1998. Application forms should only seek information that is relevant to the capacity of the person to do the job.

Having an application form available by computer for electronic dispatch can assist candidates with sight impairments who are using assistive technology with voice-activated readers on their computers. Other formats should also be available to ensure the forms are accessible to people with disabilities.

Text for an employment equality policy:

- *“The enterprise recruitment application forms will conform with the provisions of the Employment Equality Act, 1998 and with best practice in equal opportunities.”*

4.3 Equality Issues and Recruitment Agencies

Employment and recruitment agencies have grown and multiplied over the nineties. Employment agencies engaged in recruitment may not ‘filter’ candidates of, for example, a particular skin colour or ethnicity or gender at the request of an employer. Where the employer has correctly signalled no such preferences, the employment agency may still not ‘filter out’ candidates of, for example, a particular nationality, or ‘indications’ of ethnicity, such as surname or accent, or disability, on the grounds that they suspect that such candidates would be unlikely to succeed, or will be rejected. It is important that employers engaging an employment or recruitment agency should advise the agency in writing not to screen candidates on discriminatory grounds.

It is important to note recruitment agencies also have responsibilities not to discriminate under the Employment Equality Act, 1998.

Text for an employment equality policy:

- *“We will advise employment and recruitment agencies and agents of our organisation's commitment and policy position on employment equality across the nine grounds of the equality legislation, of our positive action commitments and of our shared duties with regard to the equality legislation.”*

4.4 Recruitment Agencies and Migrant workers

Enterprises and public service bodies engaging employment agencies to recruit, interview, select and process work permits and working visas for migrant workers should develop a close working understanding of the need to promote equality of opportunity for all candidates for jobs coming into Ireland. Irish employers inviting employment agencies to act on their behalf overseas are advised to suggest practices and procedures in recruitment that reflect the requirements of the *Employment Equality Act, 1998*. Standards for the treatment of migrant workers are also recommended by the International Labour Organisation (see Appendix 3).

Information obtained for the purpose of securing a work permit should not be used to discriminate.

Text for an employment equality policy:

- *“We will ensure that employment and recruitment agencies and agents acting on our behalf overseas follow practices and procedures that reflect the requirements of the Employment Equality Act and the standards recommended by the ILO.”*

4.5 Equality and Web Site Managers

On-line recruitment is a popular form for candidates in newer occupations to meet prospective employers. On-line recruitment is global. CVs are sent from one country to another electronically without candidates being physically present. Through such on-line transactions, candidates can be selected for job interview. An advertisement for a post on the Web is a ‘display’ in terms of the *Employment Equality Act, 1998*, and should comply with Irish law. Here too on the Web, it is good equality practice that all requirements should be job specific.

Inviting candidates to send digital or scanned photographs with their on-line CV is not advisable. The use of on-line photographs which give an advance impression of a candidate’s ethnicity, or age could be viewed as disadvantageous compared with candidates who send application forms with no photographs. However, where a work permit or visa is being sought for an overseas candidate (not from the EU or EEA) who has not attended for interview, photographs may be a necessary step when an appointment is being processed.

Text for an employment equality policy:

- *“The IT technical section, webmaster, and web host agent and their operations which fall within the ambit of the Employment Equality Act, 1998 will be included in the development of employment equality policies in relation to recruitment and advertising of jobs, and in relation to their accessibilities to people with disabilities.”*

4.6 Communicating job opportunities to people with disabilities, older workers, women and the Traveller community

Advertisements for jobs should signal that candidates from all nine grounds named in the equality legislation are welcome to apply. Specific measures in advertising campaigns are allowed to ensure that four groups of potential employees are specifically reached by the advertisement. These are women, people with disabilities, workers aged 50 years or more and the Traveller community.

Advertisements can be placed with training placement officers, supported employment programme offices or networks where they are more likely to be seen or brought to the attention of these four groups. This form of specific measure to stimulate candidates to come forward is *not discriminatory*. It is positive action and applies to other areas of employment such as recruitment and job orientation.

There is a requirement in the legislation to reasonably accommodate the needs of people with disabilities subject to a nominal cost exemption. This applies to the communication of job opportunities.

Text for an employment equality policy:

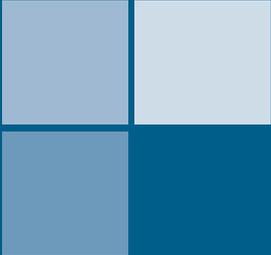
- *“We will put in place a procedure to encourage older persons, members of the Traveller community, people with disabilities or women/men to submit job applications and encourage agencies and bodies working with them to do likewise.”*
- *“We will be put in place adjustments to accommodate the recruitment and integration of persons with disabilities into this enterprise.”*

Recruitment Advice

Getting your staff

- *Be clear what the job entails and what the key duties are;*
- *Ask applicants for information that will tell you they can do the job;*
- *Don't ask questions unrelated to the job – get the facts and be open-minded;*
- *Treat people on their merits;*
- *Don't make assumptions about who won't 'fit in';*
- *Advertise a vacancy openly as this will help you attract better applicants – don't simply rely on the friends and family of current employees;*
- *Where reasonable to do so, adapt your methods of recruitment so that disabled people can apply and attend for interview;*
- *If you use a recruitment agency, make sure you do not ask them to act unlawfully; and*
- *If you are not doing the recruitment yourself, keep track of what's happening.*

Source: published by the UK Commission for Racial Equality,
Equal Opportunities Commission and National Disability Council



5. Equality of Opportunity in the Interview Process

5. Equality of Opportunity in the Interview Process

5.1 Interviews and Interview Boards

The moment of interview, however brief, is an occasion for an enterprise to display its openness to candidates of all beliefs, abilities, and nationalities. Such an openness can be reassuring to candidates, whether they are successful at the interview or not. Candidates who have a sense of having been treated fairly at interview are more likely to reapply for other jobs which fall vacant.

Preparing interviewers, interview boards and owner-managers on how to avoid discrimination, intentionally or unintentionally, is a vital contribution to compliance with employment equality law. It is important to collect and store interview notes or grades and notes of candidate's replies, and file them carefully and confidentially

Text for an employment equality policy:

- *"We will conduct recruitment interviews on the basis of ability, so that all candidates of equal merit have an equitable opportunity to compete."*

5.2 Guidance and Briefing for Interviewing

An ever widening range of parties play a part in interviewing prospective candidates: interviewers, external interviewers, employment agencies, 'head hunters', expert panellists, on-line recruiters. It is important that those involved in the interview process understand the employer's policies in relation to employment equality and in relation to positive action, and their duties with regard to the Employment Equality Act, 1998.

Text for an employment equality policy:

- *"We will provide interviewers with detailed guidance in relation to non-discrimination and equal opportunity issues in relation to recruitment."*

5.3 Conducting the Interviews

Interviews should focus on a candidate's skills, talents, qualifications and capacities for a particular job or occupation. Equality and non-discrimination considerations should underpin any tests used for candidate selection and the preparation of questions for the interview. Questions should focus on qualifications, skills and experience. This avoids

questions related, for example, to family background or family responsibilities. Avoiding such areas steers clear of subject areas that could give rise to, or be perceived as giving rise to, discriminatory treatment of one candidate compared to another of a different marital status, or ethnic origin or disability for example.

In selecting a candidate, interviewers or panels should focus strictly on the candidate's demonstration of best capacity to do the job.

Keeping a record of how a candidate has been selected by you or your interview panel is essential to demonstrate and establish the objectivity of the process. Selection notes should contain written notes on the performance of the unsuccessful candidates. It is important to award marks in relation to how candidates score against objective criteria and to keep these records.

Text for an employment equality policy:

- *"We are committed to an agreed objective system of rating candidates for recruitment by experience, skill, qualifications, or job record as appropriate and relevant, or other objective system"*

5.4 Diversifying Interview Boards

It is important to have a diversity of people on interview boards. It can be hard to get a good mix of persons who will agree to give up their time to sit on interview boards. An interview board with a mix of persons of varying ages, disability or ethnicity, for example, can be attractive in recruiting from a wide pool of candidates. Gender balance is important and can be easier to achieve. However, too large a board can be intimidating and impractical.

Text for an employment equality policy:

- *"We will strive to ensure a balance of persons from within the nine grounds, and to achieve a gender balance, on the interview board"*
- *"We will provide all board members with briefings on the legislation and equality issues."*

5.5 Monitoring the Interview Process

It is useful to develop mechanisms to assess the experience of candidates from within each of the nine grounds. Applying such mechanisms will test the accessibility of the interview process and the ability of the enterprise to draw from the wider pool of candidates. It will also identify any barriers that have inadvertently arisen and ensure the quality of the equality dimension to the interview process.

Text for an employment equality policy:

- *“We will conduct relevant statistical checks, where feasible, of candidates at different phases of the interview process, for the success rates of candidates of different grounds in a manner that does not interfere with the specific interview process.”*

5.6 Adjustments for Candidates with Disabilities

The interview process should allow all candidates to compete with each other on an equal footing. Adjustments for people with disabilities gives them a chance to compete on an equal footing. The Civil Service as employers, Local Government Employers, Health Service Employers, have all published Codes of Practice on the subject of employment for people with disabilities.

Making appropriate adjustments to the recruitment process will enable equally qualified candidates with and without disabilities to compete for jobs fairly. Advising candidates that adjustments will be made for people with disabilities will help to ensure that such candidates do not self-select out of the process. It enables an employer to pitch recruitment to a wider labour pool.

Examples of adjustments are:

- Signal interest in candidates with disabilities in advertising;
- Invite candidates to identify any specific needs and let them know that adjustments will be made;
- Choose an accessible interview location;
- Adjust an interview location to make it accessible;
- Offer a contact point for enquiries for candidates with special needs;
- Mark a disability car parking position on letters of invitation to interview; and
- Show the location of building lifts in the interview letter.

Text for an employment equality policy:

- *“We will make appropriate adjustments to the recruitment process to enable candidates with and without disabilities to compete equally for jobs.”*
- *“We will identify contact points to ensure that we have ongoing access to the knowledge required to make reasonable accommodation for people with disabilities.”*

Disability Policies

There are sound business arguments for employing people with disabilities. According to IBEC, Irish employers who have introduced policies on disability believe that increasing the numbers of disabled employees has enabled them to respond more effectively to the business needs of customers with disabilities.

Source: Irish Business and Employers Confederation, September, 2000

5.7 Positive Action on Grounds of Gender, Age, Disability and Membership of the Traveller Community in Recruitment

The legislation allows employers to take positive action measures to assist the integration into employment of people over 50 years of age, people with a disability and members of the Traveller community, and to remove existing inequalities affecting women's opportunities.

Such measures are intended to reduce or eliminate the effects of discrimination in the past and secure the integration of these groups into workplaces and can take place during the recruitment process.

Measures to facilitate the integration of these four categories of persons into *'particular areas or a particular workplace'* are permitted. There are new forms of positive action allowed.

Text for an employment equality policy:

- *“ We are committed to undertaking positive actions on the grounds of gender, disability, membership of the Traveller community and for older workers over 50 to promote the employment and secure the integration of such persons into the workplace”*

5.8 Medical Tests

Medical tests are often a feature of the interview process. The necessity for such medical tests needs to be questioned and explored. If medical tests are used, the appointed doctor should be informed of the post for which the candidate has presented and of the skills needed to perform the job. The test therefore should be in relation to that post and not 'fitness in general'. The test process may reveal medical conditions which have no implications, some implications or several implications for the appointment of the candidate.

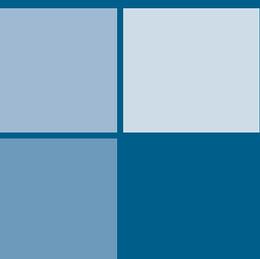
A candidate who is found to have a disability or medical condition should, in the first instance, be presumed to be available for appointment. A disability or medical condition is not necessarily a ground for refusing an appointment. Special treatment or facilities to accommodate the needs of a candidate with disabilities should be envisaged and then implemented. This requirement is subject to a limitation that such adjustments do not give rise to more than a 'nominal cost'.

However, certain forms of disability or medical conditions may lead to advice being given to an employer that precludes an appointment of a candidate on the grounds of health and safety. Such advice would have to be discussed with the candidate. A second medical opinion might be required or a safety assessment of the workplace.

Further information on disability and employment can be obtained from Comhairle (formerly the NSSB), from the Disability Unit of FÁS or from the National Disability Authority.

Text for an employment equality policy:

- *"If a medical test is found to be necessary, we will explore the outcomes with the employee, secure further medical opinion as necessary, implement a safety assessment of the workplace if needed, and make reasonable accommodation."*



6. Equality of Opportunity in Job Orientation and Job Induction

6. Equality of Opportunity in Job Orientation and Job Induction

6.1. Job Orientation

Many employers are actively seeking to recruit and retain staff from new sections of the labour force in Ireland or overseas. Enterprises hope that staff will “blend in” with the existing workforce. Job orientation and formal job induction systems accelerate the speed at which new employees blend in with existing work practices and ethos. They are also a crucial part of equal opportunities policy in the workplace.

While job orientation and job induction are for all new recruits, it is also the moment where the employer publicly recognises that some employees are arriving at the enterprise or public service body with a different background or appearance to the majority of other employees. They may be different in sex, in age, in ethnic background or nationality, or have some visible disabilities. Such differences will be apparent to other employees and be a difference also experienced by the new recruit. Other differences are not visible: sexual orientation, religious belief, family and marital status and some disabilities.

A specific job orientation period or job induction programme provides a framework to focus on both new recruits and existing staff for the purposes of integration with and adaptation to each other.

A number of small equality practices can assist new recruit in their orientation to a firm. It helps to ensure that the switchboard and reception staff can read and pronounce the names of new employees with non-English names. Where a new recruit has a disability, inviting the supervisor to examine the adjustments, if any, which may be needed in the workstation or work environment at an early opportunity is essential.

Text for an employment equality policy:

- *“We will introduce a pro-active equality approach in job orientation programmes for new recruits and undertake awareness raising and equality skills training activities with existing staff.”*
- *“We will take steps to ensure that employees for whom English is not their first language understand workplaces rules and procedures.”*

6.2 Introducing Non-Discrimination and Equality Awareness in the Workplace

Recognising differences, naming them and taking account of them is part of the new culture of equality in a labour force that is becoming more diversified and a society that is more cosmopolitan and varied. The *Employment Equality Act, 1998* identifies diversity.

Text for an employment equality policy:

- *“We are committed to identifying and valuing difference in the staff handbook to take account of the promotion of equality of opportunity on the grounds of race, gender, age, disability, sexual orientation, family and marital status, religious belief and membership of the Traveller community.”*

So what can business do to combat racism?

Here are some suggestions:

- Organise anti-racism training for all staff;
- Send out a clear message to staff - and customers - that racism is not acceptable in your enterprise;
- Explore the issue of racism in your enterprise through surveys on attitudes and experience;
- Develop an inter-cultural ethos in areas where staff congregate;
- Incorporate an anti-racism statement in your equal opportunities policy document
- Devise an action plan to combat racism; and
- Monitor and evaluate the procedures to ensure that the desired results are being achieved.

Anti-Racist Workplace Week, October 2000

6.3. Involving Supervisors and Line Managers

Most core decisions in an enterprise or public service body are taken at very senior level. The majority of those decisions will be implemented well down the line. Line managers and supervisors play a crucial role in the day to day operations and interactions of staff.

Their involvement in the employment equality policy and its planning, their ability to communicate policies, and to explain new approaches is on the front line of bringing equality of opportunity to individual employees. Queries about discrimination, or unequal treatment, or prejudice may reach line managers and supervisors in the first instance. They need to be able to respond with factual information on enterprise policy.

Text for an employment equality policy:

- *“We will develop information, awareness sessions and resources on employment equality policies for front line managerial and supervisory staff and all staff.”*
- *“We will encourage front line managerial and supervisory staff to contact senior staff if they are uncertain or unsure as to whether a situation constitutes equal treatment or discriminatory treatment.”*

Training in equality issues

‘Training to give managers and others the skills to implement equal opportunities policy is also vital. Many people are responsible for encouraging employees to apply for training or promotion, for recruitment and selection decisions, and for creating an atmosphere of equal opportunities in their departments.’

Equality Commission, Northern Ireland.

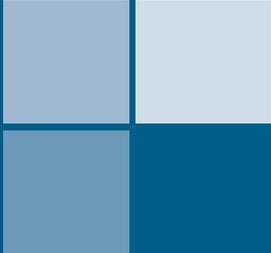
6.4. Adjustments for Employees with Disabilities

The induction and orientation process needs to include adjustments for new employees with disabilities to their jobs. Some of the adjustments may be very small. Some may be significant and require more planning and reflection. Core materials such as Health and Safety procedures, job instructions, works manuals, and grievance procedures should be available and accessible to new employees with disabilities.

Advice and support, including grants in this area, are available from a variety of sources, including National Disability Authority, Comhairle and the Disability Unit of FÁS.

Text for an employment equality policy:

- *“We will identify a contact point (equality officer) to explore necessary adjustments with employees with disabilities; to access any necessary advice or support and to secure implementation of such adjustments.”*
- *“Co-employees and supervisors will be provided with information to increase their understanding of adaptations and adjustments required in the process of recruitment and continued employment of employees with disabilities.”*



7. Equality of Opportunity in Career Promotion and Progression

7. Equality of Opportunity in Career Promotion and Progression

7.1 A Chance for All

The encouragement of all categories of employees to prepare, plan and consider themselves for promotion or for work in other divisions and sections of a workplace will signal to staff that promotion is open to all suitably qualified candidates.

Diversifying promotional opportunity can include widening the range of persons who conduct promotional interviews or taking steps to prepare a wider range or class of persons to have the capacity to undertake promotional interviews.

7.2 Maintaining Records and Reviewing Files

There are three reasons for keeping a good record of the applicants who put themselves forward for promotion and their progress rates through the promotion process:

- enterprises can spot categories of employees who are under represented in the promotions process over time;
- companies will have reliable data to hand if there is a complaint of discrimination in relation to the promotion process; and
- exchanges between trade unions and employers in relation to promotion will be fact-based.

Many organisations are used to keeping promotional records on the ground of gender. Companies in some employment sectors are already keeping records of nationality as the workforce composition diversifies. The same practice could now be extended to other grounds for other workforce categories in relation to promotion.

Text for an employment equality policy:

- *“It is our policy to encourage promotion and progression of staff within the enterprise regardless of their gender, marital status, family status, religious belief, race, age, sexual orientation, disability or membership of the Traveller community. The enterprise is committed to monitoring the promotion process where feasible to assess equality of opportunity in this area.”*

7.3 Equal Opportunities in Training and Broadened Experience

The opportunity for further training at work or to acquire a broader range of experience is part of today's enterprise and the public service. Discrimination in training, work experience

and employment counselling opportunities is prohibited by Section 8(7) of the Employment Equality Act, 1998.

A typical Irish enterprise offers two to three training days a year per full-time employee. Training or a wider range of experience is closely connected to promotional opportunities. Those who have recently joined the paid and formal workforce for the first time such as people with disabilities, members of the Traveller community, or have re-entered after an absence, for example, older people or women returning after an absence, should be encouraged to take up training opportunities. These are precisely, although not exclusively, the employees for whom training and broadened experience can contribute to promotion prospects.

The timing and location of training can raise issues for different groups including working parents with childminding responsibilities to balance with their working lives. For example if the timing and location of training is different from the regular working hours and location of the worker concerned, this can pose problems of accessibility. Training opportunities should be available equally to full-time and part-time staff. The accessibility requirements of employees with disabilities must also be accommodated.

Progression in some larger workplaces comes via a broadened experience in a variety of sections or job postings. Such “horizontal” moves across the enterprise build up the experience of an employee in a larger organisation and expose them to a range of activities of a Government Department, a large bank, call-centre or supermarket operation. There can be trade union-management agreement concerning such moves.

Text for an employment equality policy:

- *“We will advertise enrolment for training, work experience and employment counselling opportunities so that they are known to and understood as open, available and accessible to all qualified employees, full-time and part-time, including all nine grounds named in the Employment Equality Act, 1998.”*
- *“We will ensure that all training, work experience and employment counselling opportunities are open, available and accessible to full-time and part-time employees, including all nine grounds named in the Employment Equality Act.”*
- *Applications are welcome from employees who have not enrolled on previous training days. Employees with disabilities, women and older employees and Traveller community employees will be encouraged to apply and enrol for training opportunities.”*

7.4 The Family-Friendly Workplace and Work-Life Balance

Employee's concerns to manage their lives outside working hours has now become an enterprise issue. An ever widening range of initiatives to enable employees to restore balance between work and private or home life have appeared in recent years. A *National Framework Committee on Family Friendly Policies* has been established under the *Programme for Prosperity and Fairness* to further promote this range. Such initiatives are important where a large proportion of employees have responsibilities for children and young teenagers at home, for ageing parents who live separately or for dependent relatives. Workers in this category are looking for a family-friendly enterprise.

Larger companies and public service bodies have developed a range of options to assist employees to take-up leave arrangements or avail of care services in their community. Other employers have come to agreements with trade unions over the flexible re-organisation of working hours to enable some employees to work flexi-time or blocks of days or week-on and week-off. Policies in this area can be viewed on the website: www.familyfriendly.ie

Text for an employment equality policy:

- *"We will enhance the opportunities to reconcile work-life balance among our employees."*
- *"Employees who avail of family friendly work arrangements will not be discriminated against and will be treated equally with other employees"*

7.5 Job-Appraisal

Like a job interview, a discussion with an individual on how she/he is progressing in their work is a sensitive moment. Job appraisal can take the form of an informal review of the year and opportunity for employees to air their concerns or can be connected to more formal procedures related to employee 'performance' in their job and part of career planning.

Discussions with individual employees which can have implications for promotion, should avoid discriminating between employees on grounds of age, marital status, gender or other grounds named in the *Employment Equality Act, 1998*. Intentional and unintentional differences in treatment between employees must be avoided. Equally, employees should be able to perceive that such discussions are fairly conducted. Formal and informal appraisal discussions are opportunities to confirm with employees of all backgrounds that their work contribution is valued on its merit.

In this regard, personnel involved in job appraisal will need to be firmly briefed in relation to ensuring that job appraisal procedures and practices are in compliance with the *Employment Equality Act, 1998*.

Text for an employment equality policy:

- *“Job-appraisals will be conducted on a basis which is non-discriminatory to all employees.”*
- *“Those involved in conducting job appraisals will be trained in relation to compliance with the Employment Equality Act.”*

7.6 Equal Pay

The long standing legal provisions under the Anti-Discrimination (Pay) Act, 1974 for equal pay between women and men have been repealed and replaced with Section 19 and 20 of the Employment Equality Act, 1998. The Act also contains a new provision for equal treatment in pay between employees on the eight other grounds named in the Act (Section 29). The entitlement to equal remuneration applies between employees of the same employer or between employees in associated employment.

Text for an employment equality policy:

- *“The principle and practice of equal pay will be respected and kept under review and will be a feature of any collective agreements.”*

7.7 Redundancies, Dismissal and Non-discrimination

Redundancy and dismissal is an area which is regulated in both law and in many collective agreements between employers and trade unions as part of an industrial relations policy. Redundancy procedures should be examined to ensure that they do not discriminate against employees from any group covered by the Employment Equality Act, 1998.

Issues will arise in workplaces where disciplinary or dismissal procedures are invoked by the employer. Such procedures should not discriminate against employees on grounds of their age, gender, sexual orientation, race, marital or family status, religion, disability or membership of the Traveller community.

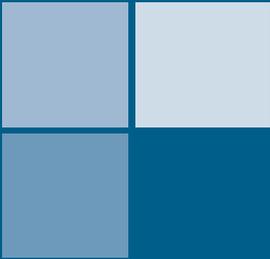
Text for an employment equality policy:

- *“We will keep redundancy and dismissal procedures under review to ensure that no direct or indirect discrimination on any of the nine grounds exists. This ongoing review will be carried out in a partnership manner in consultation with employee/ trade union representatives.”*
- *“We shall take steps, where appropriate, that employees, for whom English is not their first language, understand all disciplinary and related procedures.”*

Gender Reassignment

Gender reassignment is a process which enables people to match their bodies to their gender identity. It is not mentioned explicitly in the *Employment Equality Act, 1998*, in Ireland, but on foot of a ruling of the European Court of Justice, it is covered by the gender ground.

Employers or trade unions who are approached by employees or members who intend to seek, or are considering seeking, a gender reassignment, are advised to seek expert information. A short and helpful guide on practice has been published by the Stationary Office Limited, UK for the Department of Economic Development, Northern Ireland. It is entitled: *A Guide to Sex Discrimination Gender Reassignment Regulations* (Northern Ireland), 1999. While these regulations do not apply in Ireland, the Guide provides useful advice on best practice.



8. Sources of Further Advice

8. Sources of Further Advice

The Equality Authority
2 Clonmel Street
Dublin 2

Tel: (01) 4173336
Locall: 1890 245545
Text phone: (417) 3385
Fax:(01) 417 3331
e-mail: info@equality.ie
web: www.equality.ie

The Equality Authority is an independent body set up under the Employment Equality Act, 1998 and established in 1999. Among its functions is the goal to work towards the elimination of discrimination in employment and to promote equality of opportunity in matters to which the legislation applies.

Irish Congress of Trade Unions (Congress)
31-32 Parnell Square
Dublin 1
Tel: (01) 8897777
Fax: (01) 8872012
e-mail: congress@equality.ie
web: www.ictu.ie

All-Ireland representative body of workers with widespread experience of equality issues in workplaces

Irish Business & Employers Federation (IBEC)
Confederation House
84-86 Lower Baggot Street
Dublin 2
Tel: (01) 6601011
Fax: (01) 6601717
Web: www.ibec.ie

Representative body of Irish-based employers with its own social policy unit

National Disability Authority

25 Clyde Road

Dublin 4

Tel/minicom: (01) 6080400

Fax: (01) 6609935

e-mail: nda@nda.ieweb: www.nda.ie

The National Disability Authority (NDA) is an agency established by the National Disability Authority Act, 1999 and under the aegis of the Department of Justice Equality and Law Reform. It provides a key focal point for disability in the mainstream. The NDA assists in the co-ordination and development of disability policy.

Office of the Director of Equality Investigations

3 Clonmel Street

Dublin 2

Tel: (01) 4173300

Fax: (01) 4173399

Lo-call: 1890 34 44 24

e-mail: info@odei.ieweb: www.odei.ie

The Office of Director of Equality Investigations was established under the Employment Equality Act, 1998. It provides a legal remedy and an enforcement system for persons who complain of discrimination on any of the nine grounds of the Act.

Small Firms Association (SFA)

Confederation House

84-86 Lower Baggot Street

Dublin 2

Tel: 01 6601011

Fax: 01 6381633

e-mail: info@sfa.ieWeb: www.sfa.ie

A representative association of smaller private enterprises and companies across Ireland

Irish Small and Medium Enterprise Association

17 Kildare Street,
Dublin 2
Tel: 01 6622755
Fax: 01 6612157

An association representing private sector companies

Office of the Data Protection Commissioner

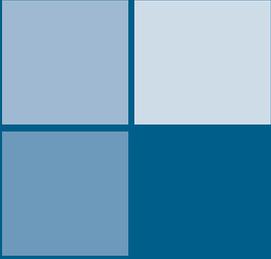
Block 4 Irish Life Centre
Talbot Street,
Dublin 1.
Tel: 01- 8748544
Fax: 01- 8745405
e-mail: info@dataprivacy.ie
www.dataprivacy.ie

An office set up by law which provides advice on the gathering and storage of data on individuals

Comhairle

Hume House
Ballsbridge,
Dublin 4
Tel: 01- 6059000
Fax 01 - 6059099
e-mail: comhairle@comhairle.ie
www.comhairle.ie

Comhairle is the agency responsible for the provision of information, advice and advocacy to members of the public on social services. Its establishment is part of a government commitment to the overall mainstreaming of services for people with disabilities.



Appendices

Appendix 1

What is discrimination?

The Employment Equality Act, 1998, promotes equality of opportunity and prohibits discrimination in relation to and within employment. The Act prohibits direct and indirect discrimination and victimisation in employment on nine grounds. These are:

- Gender
 - Marital status
 - Family status
 - Sexual orientation
 - Religion
 - Age
 - Disability
 - Race
- Membership of the Traveller community

All aspects of employment are covered by the Act:

- Equal pay
- Access to employment
- Vocational training
- Conditions of employment
- Work experience
- Promotion
- Dismissal
- Sexual harassment and harassment
- Training
- Job Classification

The legislation applies to:

- Public service and public sector employment
- Private sector employment
- Vocational training bodies
- Advertisements
- Trade Unions
- Professional bodies
- Full-time and part-time workers
- Collective Agreements; Employment Regulation Orders, and Registered Employment Agreements
- Contracts of employment
- Employment Agencies

Definitions: What is discrimination in law?

Direct Discrimination constitutes less favourable treatment. A person is discriminated against if she/he is treated less favourably than another person is, has been, or would be, treated on any of the nine grounds.

Indirect discrimination

This is discrimination in effect or by impact. There are different standards and definitions for indirect discrimination in the Employment Equality Act, 1998. It happens where people are refused employment not explicitly on account of a discriminatory reason but because of a practice or requirement which impacts negatively on a particular group. If the practice or requirement is found to have the effect of excluding substantially more of the particular group then the employer will have indirectly discriminated, unless the practice or requirement can be objectively justified in the case of a claim on the gender ground, or reasonably justified in the case of claims on the non-gender grounds.

Sexual Harassment

This constitutes discrimination on the gender ground. It includes any act of physical intimacy, a request for sexual favours, spoken words, gestures or the production, display or circulation of written words, pictures or other material. To constitute sexual harassment the actions must:

- (a) be unwelcome and
- (b) could reasonably be regarded as offensive, humiliating or intimidating.

The sexual harassment will constitute discrimination if the victim is treated differently because of the rejection of a submission to such actions or where it could reasonably be anticipated that the victim would be so treated.

Harassment

Harassment constitutes discrimination in relation to conditions of employment. It is any act or conduct which is unwelcome and could reasonably be regarded as offensive, humiliating or intimidating on any of the discriminatory grounds of the Employment Equality Act, 1998.

It includes any act or conduct, spoken words, gestures or the production, display or circulation of written words or pictures. This will constitute harassment if the conduct is:

- (a) be unwelcome and
- (b) could reasonably be regarded as offensive, humiliating or intimidating.

The behaviour must be linked to one of the discriminatory nine grounds.

Disability: Reasonable accommodation

An employer must provide reasonable accommodation to employees with disabilities. This obligation does not extend to the provision of reasonable accommodation which would give rise to more than a nominal cost..

Positive Action

The Act allows measures to promote equal opportunity for men and women by removing existing inequalities which affect women's opportunities in access to employment, vocational training and promotion and working conditions. It also allows measures to facilitate the integration into employment of:

- people over 50
- people with a disability
- members of the Traveller community.

What are the grounds covered in the law?

1. The Gender ground includes men and women, and transgender.
2. The Marital Status ground includes single, married, separated, divorced or widowed.
3. The Family status ground includes responsibility as a parent or in loco parentis in relation to a person who is under eighteen years of age, or as a parent or primary resident carer of a person over the age of eighteen with a disability who needs care or support on a continuing, regular or frequent basis.
4. The Sexual orientation ground includes heterosexual, homosexual or bisexual orientation.
5. The Religious belief ground includes religious background, outlook or none.
6. The Age ground includes persons over the age of 18 and under the age of 65 years.
7. The Disability ground includes:
 - the total or partial absence of a person's bodily or mental functions, including the absence of a part of the body
 - the presence of organisms causing, or likely to cause chronic illness or disease
 - the malfunction, malformation or disfigurement of a part of a person's body
 - a condition or malfunction which results in a person learning differently from a person without a condition or malfunction
 - a condition, or illness or disease which affects a person's thought processes, perception of reality, emotions or judgement or which results in disturbed behaviour
 - A disability which exists at present or which previously existed or which may exist in the future or which is imputed (attributed) to a person.
8. The Race ground includes race, colour, nationality or ethnic or national origins.
9. The Traveller community ground, which is defined as 'people who are commonly called Travellers and who are identified (both by themselves and others) as people with a shared history, culture and traditions, including, historically, a nomadic way of life on the island of Ireland'.

Appendix 2

European Framework

For the last 25 years the dominant focus of European Equality Law has been on discrimination on grounds of sex. There has been a detailed legal framework with Article 141 E.C. and Directives on equal pay and equal treatment in employment, self-employment, social security and the burden of proof¹. A significant body of casework has also developed in this area.

The Amsterdam Treaty inserted a new Article 13 in the E.C. Treaty which empowers the European Institutions to take appropriate action to combat discrimination on the basis of sex, racial or ethnic origin, religion and belief, disability, age or sexual orientation. Two new Directives have been adopted which have to be implemented by member states in 2003. Directive 2003/43/EC of 29 June 2000 implementing the principle of equal treatment between persons regardless of race or ethnic origin. This Directive prohibits discrimination in relation to employment, self employment, workers and employers and professional organisations, social protection, social advantages, education and access to goods and services including housing. Council Directive 2000/78/EC of 27 November establishes a general framework for equal treatment in employment and occupation. This directive prohibits discrimination in employment on grounds of religion or belief, disability, age or sexual orientation. Amendments will have to be made to the Employment Equality Act, 1998 and the Equal Status Act, 2000, to give effect to these Directives.

Directive 75/117/EEC on Equal Pay for Men and Women (1975) O.J. L. 45/19, Directive 76/207/EEC on Equal Treatment for Men and Women as regards access to Employment, Vocational Training and Promotion, and Working Conditions (1996) O.J. L39/40, Directive 86/613/EEC on Equal Treatment between Men and Women engaged in an activity, including agriculture, in a self-employed capacity, and on the protection of self-employed women during pregnancy and motherhood (1986) O.J. L359/56, Directive 79/7/EEC on Equal Treatment for Men and Women in Occupational Social Security Schemes (1986) O.J. L225/40, Directive 96/97, Directive 97/80/EC on the Burden of Proof in cases of Discrimination based on Sex (1998) O.J. L14/6.

Appendix 3

Advice from the International Labour Organisation Conventions on Migrant Workers

The International Labour Organisation based in Geneva has adopted a number of Conventions relating to the recruitment, introduction or placing of migrant workers in employment outside their country of residence. These voluntary standards are of relevance to the recruitment and placement of non-European Union nationals in Ireland, where the recruitment process takes place outside Ireland.

Convention 97 Migration for Employment Convention (Revised) 1949, (Annex 1, Article 5) proposes:

1. (a) *“that a copy of the contract of employment shall be delivered to the migrant before departure or, if the Governments concerned so agree, in a reception centre on arrival in the territory of immigration.”*

1. (b) *“that the contract shall contain provisions indicating the conditions of work and particularly the remuneration offered to the migrant.”*

Convention 143 Migrant Workers (Supplementary Provisions) Convention, 1975 (Article 10) proposes:

“... equality of opportunity and treatment in respect of employment and occupation, of social security, of trade union and cultural rights and of individual and collective freedoms for persons who as migrant workers or as members of their families are lawfully within its territory.”

Source: www.ilo.org

Appendix 4

Organisations participating on the Framework Committee

Congress

IBEC

Equal Opportunities Network

Department of Justice, Equality and Law Reform

Department of Finance

Local Government Management Services Board

Health Service Employers Agency

Equality Authority (Chair)