

Ethical & Legal Considerations in Occupational Psychology

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What makes us different:

Nationality &
Ethnicity

Gender,
Gender Identity &
Sexual
Orientation

Religious &
Philosophical
Belief

Disabilities

Family
Background &
Social Life

Culture &
Education

Age



What does 'diversity' mean to you?

Would you say that you work in a diverse work environment?





Diversity

Diversity is the range of people in your workforce.

For example, this might mean people with different ages, religions, ethnicities, people with disabilities, and both men and women.



Managing Diversity

- **Accept:** don't dismiss persons on the basis of different characteristics;
- **Encourage:** ensure that your workforce accepts differences and implement facilitating techniques;
- **Respond:** ensure that you reasonably cater for all differences;
- **React:** take action against discriminatory behaviour.



Does your work environment comply with these principles?

Diversity & You

How can workplace diversity help **you**?

- Satisfied staff members (and therefore less staff turnover and less administration costs);
- Better capability to adapt to and overcome changing circumstances;
- Positive employer and brand image;
- Wider market scope;
- Reflective diversity encourages customer satisfaction.



The Constitution

*“The State shall promote the **equal right of men and women** to enjoy all economic, social, cultural, civil and political rights and for this purpose **shall take appropriate measures to eliminate all forms of discrimination** between the sexes by any person, organisation or enterprise; the State shall in particular aim at ensuring that women workers enjoy equal rights and the same wages for the same work as men”.*

Article 14



The Employment and Industrial Relations Act (EIRA)

Chapter 452

*“discriminatory treatment” means any **distinction, exclusion or restriction** which is not justifiable in a democratic society including discrimination made on the basis of marital status, pregnancy or potential pregnancy, sex, colour, disability, religious conviction, political opinion or membership in a trade union or in an employers’ association.”*

Article 2



The Employment and Industrial Relations Act (EIRA)

- The EIRA extends its protection across:
 - Potential recruits (including advertising and calls for applications);
 - Existing employees (even upon termination).
- Equal pay for work of equal value
- Discriminatory arrangement and management of work

EXCEPTION: where discrimination is based on “*a genuine and determining occupational requirement*”.

Example:

A charity works with gay men and women that have suffered bullying at work and in education, or violence relating to their sexual orientation. They want to employ gay counsellors **ONLY** as the NGO believes they would be better able to relate to the gay victims and provide advice. This would probably be a genuine occupational requirement and **NOT** be unlawful discrimination.



The Equal Treatment in Employment Regulations, Subsidiary Legislation 452.95

These regulations are enacted by virtue of the EIRA.

The grounds that are covered are religion or religious belief, disability, age, sex, sexual orientation, and racial or ethnic origin –however, nationality is excluded.

The regulations apply to:

- Access to employment (recruitment);
- Training;
- Employment;
- Union association.



Discrimination

- Direct discrimination: “*where one person is treated less favorably than another is, has been, or would be, treated in a comparable situation*”.
- Indirect discrimination: “*where an **apparently neutral provision, criterion or practice** would put persons ... at a disadvantage when compared with other persons*”.



Discrimination by Association

Discrimination by association is separate from direct or indirect discrimination as it is not exactly attached to the person who alleges discrimination.

This occurs when a person claims that they are being discriminated against not because of a protected characteristic they possess, but because of such characteristic **possessed by another person with whom they are associated.**





The Equality for Men and Women Act, Chapter 456

*“discrimination” means discrimination based on sex or because of **family responsibilities, sexual orientation, age, religion or belief, racial or ethnic origin, or gender identity, gender expression or sex characteristics** and includes the treatment of a person in a less favourable manner than another person is, has been or would be treated on these grounds.*

Article 2



The Equality for Men and Women Act

What protection does the Act afford to employees?

- Discriminatory treatment/management of work;
- Educational opportunities;
- Sexual harassment;
- Discriminatory recruitment practices.



National Commission for the Promotion of Equality (NCPE)

- The NCPE is set up by virtue of the Equality for Men and Women Act;
- The NCPE is the main governmental authority tasked with directing local policy on equality and identifying pitfalls to address in this regard;
- The Commissioner is also obliged to investigate issues (including workplace issues) where an equality issue arises, particularly where this affects gender equality.



The Equality Bill



The Equality Bill

This law has been a point of contention for years, and was tabled before Parliament in 2019:

Necessary to protect persons from discriminatory treatment

Imposition of equality may have the effect of constraining others' freedoms and rights

The Equality Bill's Protected Characteristics

- Age
- Belief, creed or religion
- Disability
- Family responsibilities or pregnancy
- Family or civil status
- Gender expression or gender identity
- Genetic features
- Health status
- Language/ Nationality/ Political Opinion
- Property
- Sex or sex characteristics
- Sexual orientation
- Social origin



Article 4

Ordinary vs. Intersectional Discrimination

- Ordinary Discrimination:
“discrimination on the basis of only one of the protected characteristics”.
- Intersectional discrimination (to be introduced in the new law, and referred to as multiple grounds):
“when a person is discriminated against on the basis of two or more of the protected characteristics”.



Intersectional Discrimination

Also known as dual discrimination, this form of discrimination has come to light in recent years and requires some thought.

Example:

A headscarf ban would discriminate against **Muslim** (1) **women** (2) – it would make no difference to other women and Muslim men.



The Equality Bill & Employers

- Employers will be required to provide prospective employees, upon request, information about the employer's selection criteria, therefore increasing the transparency in the process.
- The parameters of the new law would also cover employment agencies and trade unions, who would be subject to the same restrictions against discrimination.
- This law aims to repeal and replace the Equality for Men and Women Act (Chapter 456 of the Laws of Malta), which currently regulates discrimination & harassment at the workplace.



The Equality Bill & Employers



Employers are obliged to take steps to:

- Prevent discrimination;
- Prevent, more specifically, harassment and sexual harassment.

The Equality Bill & Employers

How can an employer be prepared?

- Instil an environment where diversity is encouraged;
- Train employees on acceptance, tolerance and equality;
- Implement policies and equality and diversity at the workplace and ensure these are thoroughly explained;
- Set out processes to ensure that equality is maintained throughout all stages of employment, including recruitment.



The Equality Policy



One of the ways in which you can ensure that your staff members are introduced to the topics of diversity and equality is by implementing a **written policy**.

It is essential that:

- You ensure that employees have read the policy (for example, by having them sign a confirmation to that effect);
- You provide explanations and/or training where necessary written policies shouldn't form part of employment contracts, to allow the company to change them unilaterally.



The Equality Policy

The Equality policy is there to:

- Inform
- Explain
- Define
- Guide
- Warn



Basic Contents



- Company's vision/mission statement;
- The protected characteristics;
- An explanation of the different types of discrimination and harassment which exist;
- The Company's guarantee to recruit and select persons without any preconceived prejudice or bias in terms of the protected characteristics;
- Guarantee that actions during employment (including discipline and termination) are applied indiscriminately.

Action

- Your policy must clearly indicate that you are committed to take action against any behaviour of a discriminatory nature;
- Invite disgruntled employees to submit a formal grievance;
- Investigate and take disciplinary action against such incidents.



Penalties

- Persons or entities guilty of infringements can be liable to a fine of up to €10,000.
- However, the bill specifies that the action available under the Employment and Industrial Relations Act and the Equality Commission Act, against acts of discrimination may still be made use of.



Training

- Keep in mind that having written policies may not always be enough.
- Training may be required, and certain types of workforces may require different styles of training depending on:
 - The industry;
 - The work carried out;
 - The size of the working environment;
 - Employees' background and education;
 - The differences among departments/sections;
 - Very often, policies might need to be explained in detail.



Questions?



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