## PROMOTING EQUALITY AND PREVENTING DISCRIMINATION AT WORK IN VIET NAM:



## FOR EMPLOYERS



# Foreword by the VCCI

t is with great pleasure that the Vietnam Chamber of Commerce and Industry (VCCI), presents this Code of Practice and the accompanying series of four guide booklets, jointly developed with the International Labour Organization (ILO) Bureau for Employers' Activities (ACT/EMP), to assist employers in promoting equality and preventing discrimination at work in Viet Nam.

Since ratifying the ILO Discrimination (Employment and Occupation) Convention, 1958 (No. 111) in 1997, Viet Nam has taken a number of major legislative steps to promote equality and non-discrimination in the workplace, which include prohibiting discrimination in the 2012 Labour Code. Preventing discrimination in the workplace is more than a legal obligation for employers, it also makes good business sense and represents an important component in being a socially responsible employer.

As a representative of Vietnamese employers, the VCCI aims to provide practical guidance to all employers in improving their business practices through the promotion of equality in non-discriminatory workplaces. It addresses questions that general managers, human resource managers, supervisors, workers' representatives and all company staff need to consider and apply in their daily work, including decisions related to recruitment, staff training, promotion, retrenchments and business practices such as sourcing and marketing.

The VCCI hopes that the Code of Practice and the accompanying series of four guide booklets will serve as useful references for employers. These materials are primarily intended to provide practical information, legal guidance and best practices from VCCI members.

We would like to express our appreciation to Ms Tran Thi Lan Anh of the VCCI Bureau for Employers' Activities, Ms Nguyen Thi Tuyet Minh of the VCCI Women Entrepreneurs Council and the VCCI Blue Ribbons Council for leading the development of the guide. We also thank Ms Nguyen Cuong Pham and Ms Nguyen Hong for providing expert guidance as well as VCCI member companies who participated the development of the guide. Finally, we would like to thank ILO ACT/EMP for supporting us along this journey.

We commend this guide to you and look forward to working with you.





# Foreword by the ILO

here is growing consensus that a diverse workforce significantly contributes to economic growth and development. In today's emerging markets, companies that seek to be leaders and set examples of building a productive workforce must address issues of discrimination in the workplace. Businesses that succeed in doing so create conditions for diversity and equality of opportunity and treatment in employment, and often going beyond what is required of the in national law. Employers who adopt such approaches may derive a number of business advantages, including a wider pool of talent from which to recruit, improved employee morale and loyalty, reduced exposure to legal challenges, reputational benefits and penetration of new markets. Overall, nondiscriminatory employment practices is not only the right thing, but also the smart thing for business to do.

Equality of opportunity and treatment in employment forms is enshrined in the ILO's Decent Work Agenda which promotes opportunities for all men and women to obtain decent and productive work in conditions of freedom, equity, security and human dignity. The ILO's Discrimination (Employment and Occupation) Convention (No. 111), adopted by ILO member States in 1958, remains the most comprehensive and widely ratified international instrument dedicated to the promotion of equality of opportunity and treatment in the world of work. The elimination of discrimination is one of the ground rules of a fair globalization and also an important condition for sustainable development.

It is therefore with great pleasure that the ILO-Bureau for Employers' Activities (ACT/EMP) has embarked on this partnership with the Vietnam Chamber of Commerce and Industry (VCCI) aimed at supporting the Chamber's efforts to prevent discrimination at the workplace and promote equal opportunities and treatment of all men and women in Viet Nam.

This set of five Guides on "Promoting equality and preventing discrimination at work in Vietnam" will hopefully help to raise awareness amongst VCCI's members on the economics behind having an inclusive workforce and providing better guidance to its members on non-discrimination. The Guides have been designed to establish a new VCCI training service on non-discrimination through the training of trainers. Advocacy materials to accompany the Guides will be developed and disseminated to members and other interested parties.

I would like to thank ILO colleagues who were involved in developing these Guides, including Jae-Hee Chang who led the coordination, Gary Rynhart for technical support and Alex Phuong Nguyen for supporting the development. I would also like to thank the ILO- Norway Partnership Cooperation for provision of funds necessary to develop the Guides and related activities.

#### **Deborah France-Massin**

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ACT/EMP	Bureau for Employers' Activities
ILO	International Labour Organization
MOLISA	Ministry of Labour, Invalids and Social Affairs
VCCI	Vietnam Chamber of Commerce and Industry
VCGL	Vietnam General Confederation of Labour

# **1 Introduction 1.1 Purpose of the Code of Practice for Employers**

his Code of Practice for Employers (Code) articulates a set of guiding principles for employers and businesses on promoting non-discrimination and equality at work. The Code has been developed by the Vietnam Chamber of Commerce and Industry (VCCI) in cooperation with the Bureau for Employers' Activities (ACT/EMP) of the International Labour Organization (ILO) Regional Office for Asia and the Pacific to help VCCI member companies and all other employers to take measures to promote equal opportunity and treatment, and to eliminate discrimination in their company policies and practices.

In Viet Nam, employers have a legal obligation to ensure that their recruitment and employment practices are free from discrimination. This Code is not a substitute for national law, but a **voluntary instrument that seeks to promote compliance with the law and to present internationally recognized good practices in relation to the promotion of equal opportunity and treatment**. Compliance with the Code makes good business sense and facilitates a company's efforts to be a socially responsible employer.





Eliminating discrimination from the workplace is a continuous work in progress. To pretend it can be achieved through a mechanical application of the law would be to massively underestimate the powerful influence of societal biases on labour markets in countries around the world. Of course, the law does provide the basic benchmarks. A proactive manager, however, will be attuned to the ever-shifting attitudes, expectations and perceptions of discrimination and its remedies among workers and the community in which the company is embedded and among stakeholders in the production process. Gradually incorporating into management practice the Code's guidelines that reach beyond legal compliance should deliver benefits to businesses over time. These benefits include improved ability to attract a talented and skilled workforce and ensure increased staff retention, greater workforce satisfaction and lower employee turnover, in addition to meeting the most basic objective of avoiding legal prosecution. Enhanced employee well-being also reduces the risk of workplace conflict. In addition, measures that promote diversity and equality can increase productivity, innovation and creativity in the company, open access to new market segments and improve company brand image and reputation.

The guidelines of this Code are drawn from the Constitution of Viet Nam (2013), in which Article 16 provides, "All citizens are equal before the law. No one shall be discriminated in his or her political, civic, economic, cultural, and social life", in addition to relevant Vietnamese legislation. It also references the ILO Discrimination (Employment and Occupation) Convention, 1958 (No. 111) and the Equal Remuneration Convention, 1951 (No. 100), both of which Viet Nam ratified in 1997.



# **1.2 Scope and terms** used in the Code

#### 1.2.1 Scope of application

- his Code provides guidelines for the benefit of business owners and managers, supervisors and all employees, including regular workers, part-time workers, casual workers, subcontractors and agents working on commission in Viet Nam. It covers:
- Hiring.
- Remuneration.
- Defining and assigning work
- Access to vocational training, advancement and promotion.
- Conditions of work including hours of work, overtime, rest periods, public holidays, annual holidays with pay, sick leave, occupational safety and health measures.
- Granting of social security measures and welfare facilities and benefits provided in connection with employment.
- Security of tenure of employment, including dismissal and retrenchment and
- Other relevant business activities.

If employers rely on the services of employment agencies to fill job vacancies, they should require the agencies to abide by the Code. Employment service centres who are members of the VCCI are encouraged comply with this Code. Labour dispatch agencies that are the employer of workers put at the disposal of user enterprises should also abide by the Code.



#### **1.2.2 Terms used in the Code**

#### Discrimination

Convention No. 111 defines discrimination as any distinction, exclusion or preference made on the basis of a person's personal characteristics not related to the job, which impairs equality of opportunity and treatment in employment or occupation. Under this Code discrimination is prohibited on the grounds of gender (including pregnancy, marital status and family responsibilities), race, colour, belief, religion, HIV status, disability, political opinion, participation in trade union activities, national extraction or social origin.

See inherent requirements of the job, special measures of protection, and affirmative action for exceptions to this rule.

In reality, discrimination can manifest in a number of different ways, such as:

• Structural (or systemic) discrimination: the institutionalization of discrimination in social patterns, organizational structures and legal constructs. For example, differences in pay levels between women and men (the gender pay gap) do not emanate from exceptional stand-alone discriminatory payment practices of individual employers; they occur systematically throughout the labour market. The gender pay gap exists due to persistence of traditional ideas about women's and men's gender roles, their work contribution and systemic undervaluation of jobs that are considered "women's work."

• **Direct discrimination:** situations where unequal treatment of job applicants or employees is clearly undertaken in contravention of the grounds covered in law or the Convention. For example, job advertisements that specify the sex of candidates are directly discriminatory.

• Indirect discrimination: arises when rules and practices appear neutral, but in practice lead to disadvantages primarily suffered by persons of one particular sex or ethnicity, for example. Job advertisements that set irrelevant height requirements that only male applicants are likely to meet constitute indirect discrimination. Such instances are harder to detect than direct discrimination, and thus more difficult to correct. They are as harmful as direct discrimination, however. Employers should



take effective steps to identify and eliminate indirectly discriminatory elements in their human resources management policies and practices. For example, a manager of a cleaning company who uses different job titles and pays a higher wage to male "surface technicians" than to female "cleaning maids", despite the fact each group does the same work, engages in indirect sex discrimination.

• Discrimination in law (de jure): a law or regulation treats different groups of workers in different ways. For example, in many Asian countries, women's employment in certain occupations or under certain working conditions — such as underground, at night or in high places — is prohibited by law. This restricts women's free choice of employment.

• Discrimination in practice (de facto): factual differences in opportunities and treatment of different groups in the labour market or in company human resources practices. For example, strong gender stereotypes and ideas about what jobs are suitable for women and men limit choice of employment for both women and men in many Asian countries, including Viet Nam.

#### Equal opportunity and treatment at work

Equal opportunity and treatment at work means that recruitment and employment decisions are made and terms and conditions of employment are determined with exclusive reference to merit, skills, experience, abilities and the suitability of a person for such a position, without any interference of discriminatory bias or assumptions.

• Equal opportunity: means having an equal chance to apply for a job or a specific position, to manage an enterprise, to obtain education, to have access to professional development or promotion, or to have access to means of production that are essential to engaging in economic activities (such as access to credit).

• Equal treatment refers to equal entitlements such as pay, working conditions, employment security and social security.



• **Promoting equality and preventing discrimination in the workplace** refers to measures to ensure that all employees have equal opportunities, are treated equally and without discrimination.

#### Equal remuneration for work of equal value (equal pay)

Equal remuneration for work of equal value refers to rates of remuneration established without discrimination on any ground. The term remuneration includes the basic wage and any additional cash or in-kind emoluments, such as benefits, seniority increments and bonuses, arising out of the worker's employment and payable directly or indirectly by the employer to the worker.

Equal pay for work that is the same, identical or similar, and for work that is different but has the same value is usually measured by analysing job characteristics such as skills, experience, effort, responsibilities and working conditions.

#### Harassment

Harassment comprises unwelcome conduct or comments that violate a person's dignity or create an intimidating, hostile, degrading or offensive work environment. Harassment is discriminatory if it is based on gender, sex, marital status, race, colour, social class, belief, religion, HIV status, disability, because a person establishes or joins a trade union and participates in trade union activities or any other prohibited ground of discrimination covered in Vietnamese law or the ILO Discrimination (Employment and Occupation) Convention, 1958 (No. 111). Actions constituting harassment include the following:

- Offensive jokes, personal insults, persistent criticism and derogatory language.
- Unwanted physical contact.
- Defining and assigning work
- Threatening behaviour and gestures; and
- Behaviours that aim to alienate, undermine or 'freezing out' an individual.



According to the Viet Nam Code of Conduct on Sexual Harassment in the Workplace<sup>1</sup>, **Sexual harassment** is defined as any behaviour of a sexual nature that affects the dignity of women and men, which is considered as unwanted, unacceptable, inappropriate and offensive to the recipient, and that creates an intimidating, hostile, unstable or offensive work environment.

• "Quid pro quo" (this for that) sexual harassment is committed when an employer, supervisor, manager or co-worker undertakes or attempts to influence the process of recruitment, promotion, training, discipline, dismissal, salary increment or other benefit of an existing staff member or job applicant, in exchange for sexual favours.

The worst forms of sexual harassment are criminal acts such as sexual assault or rape, which are covered under the Penal Code. Sexual harassment is prohibited by Article 8.2. of the Labour Code, which stipulates that "...committing sexual harassment at the workplace ... is prohibited" and acts of sexual harassment such as rape and other forms of sexual assault are criminal offences (Penal Code Article 111).

Sexual harassment in the workplace can be physical, verbal or non-verbal, as described below:

• **Physical** sexual harassment includes any unwanted contact, ranging from intentionally touching, caressing, pinching, hugging or kissing to sexual assault or rape.

• Verbal sexual harassment includes socially and culturally inappropriate and unwelcome comments with sexual overtones such as sexually suggestive jokes or comments about a person's dress or body, made in their presence or directed toward them. It also includes persistent proposals and unwelcome requests or persistent personal invitations to go out.

• Non-verbal sexual harassment includes unwelcome gestures, suggestive body language, indecent exposure, lascivious looks, repeated winks and gestures with fingers. It also includes the unwelcome display of pornographic materials, sexually explicit pictures and objects, screen savers or posters as well as sexually explicit e-mails, notes or SMS messages.

<sup>1</sup> Ministry of Labour, Invalids and Social Affairs (MOLISA), VCCI and Vietnam General Confederation of Labour (VCGL): Code of Conduct on Sexual Harassment in the Workplace (Hanoi, 2015).



#### Inherent requirements of the job (genuine occupational characteristics)

Inherent requirements of the job refers to the necessary, objective and proportionate qualifications that an applicant or employee needs to have in order to perform the essential job functions, duties and responsibilities adequately. They are mostly related to certain abilities and skills, but may in exceptional circumstances include also personal characteristics of applicants or employees, such as sex, religion or absence of a specific impairment or disability, if deemed essential for adequate performance of the job. Any distinction, exclusion or preference based on the inherent requirements of the job in question shall not be deemed to be discrimination.

#### **Reasonable accommodation**

Reasonable accommodation refers to any necessary and appropriate modification or adjustment to the working arrangements or environment that does not impose a disproportionate burden on the employer, and that enables a qualified applicant or employee with special needs relating to health, disability, religion, family responsibilities, or any other ground to have

access to employment, or to participate or advance in employment. For example, reasonable accommodation measures may include the rearrangement of working time or the provision of special equipment to a disabled employee.

#### **Special measures**

Special measures refers to support provided to certain groups of workers in order to help them gain equal opportunity and treatment at work. The types of special measures are:

• Special measures of protection: preferential treatment and protection provided to certain groups of employees in need of special support, such as pregnant and nursing women, employees with disabilities or employees with family responsibilities. Special measures of protection are not a form of discrimination against persons who are not in need of special support.



• Affirmative action measures: special temporary measures to redress the effects of past discrimination in order to establish equality of opportunity and treatment in practice between different groups of employees, or job applicants. These measures target particular groups of applicants or employees, such as women, workers with disabilities, or ethnic minorities that are disadvantaged in access to employment or specific positions or in the terms and conditions of the work.

#### Equal opportunity employers

Equal opportunity employers treat people equally, whether they are employees or customers, and apply fair and equitable business and human resources practices. Becoming an equal opportunity employer means incorporating the foundations of equality and non-discrimination within management philosophy and endorsing these principles throughout the company. Being known as an equal-opportunity employer sets an enterprise apart and, as suggested above, entails both workplace and business benefits.





Promoting equality and preventing discrimination at work in Viet Nam:

# 2 Guiding principles to promote equal opportunity and treatment and prevent discrimination at work

# 2.1 Key principles of equal opportunity and treatment and non-discrimination at work

## 2.1.1 Legal compliance

mployers should comply with all Vietnamese laws, regulations and procedures concerning non-discrimination and equality in employment and occupation.

#### 2.1.2 Equal opportunity and treatment

(a) Employers should ensure that all recruitment and employment decisions in their company are made solely with reference to merit, skills, experience and abilities of the applicant or employee in question, without any interference of discrimination or bias. Adequate attention should be paid to team diversity and any affirmative action measures adopted in the company.

(b) To ensure that all employment decisions are made without discrimination, the employer should establish and use objective criteria for all aspects of employment, including recruitment, remuneration, benefits, terms and conditions of work, access to vocational training, advancement and promotion, as well as termination of the employment contract.



### 2.1.3 Non-discrimination

(a) Employers should ensure that all their recruitment and employment policies and practices are free from any discrimination on the seven grounds covered by this Code.

(b) Under this Code, direct and indirect discrimination is prohibited on the grounds covered in Vietnamese legislation<sup>2</sup> and ILO Convention No. 111. The **seven prohibited grounds** of discrimination are:

- Gender, sex (including pregnancy, marital status and family responsibilities).
- Race, colour.
- Social class.
- Belief, religion.
- HIV status.
- Disability; or
- For the reason of establishing or joining a trade union and participating in trade union activities.

(c) Employers are encouraged to take further action to promote equal opportunity and treatment and fight discrimination on any additional ground, such as place of origin, age, physical appearance, health status (beyond HIV status) and sexual orientation.

<sup>2</sup> Article 16 of the Vietnamese Constitution; Article 8 of the Labour Code; Article 14 of the Law on Persons with Disabilities; and Article 8 of the Law on HIV/AIDS Prevention and Control.



Promoting equality and preventing discrimination at work in Viet Nam:

## 2.2 Fair recruitment practices

#### 2.2.1 Recruitment documents: Job descriptions, job advertisements and application forms

(a) Job descriptions should describe the main tasks and responsibilities of the job and the skills, abilities, knowledge, education and experience needed to perform the key tasks and responsibilities of the job.

(b) Job advertisements should include a job description and clearly state the selection criteria principally related to qualifications, skills, knowledge and experience. Criteria related to job applicants' personal characteristics, such as sex, race or ethnicity, colour, religious belief or creed, social origin or birth, language, national origin, political opinion, disability, HIV status, membership in a trade union or participation in union activities should not be included in job advertisements. Personal characteristics may only be referred to if they are inherent requirements of the job. An employer who advertises a position requiring a specific personal characteristic that may be viewed as discriminatory should state the reason for this requirement in the advertisement.

(c) Where appropriate, the employer should state its commitment to equal employment opportunity in the job advertisement and specify that vacancies are open to all qualified persons without any discrimination on the grounds prohibited under this Code. If the company is implementing affirmative action measures targeting particular categories of workers these should be mentioned in the job advertisement.

(d) The job application forms should only ask job applicants to provide information that is relevant for determining the applicants' suitability for the job in question, such as information on qualifications, skills, knowledge, relevant experience, preparedness to accept certain responsibilities and willingness to accept particular working conditions. Unless objectively



relevant to the nature of the job, the employers should not ask applicants to provide personal information related to their sex, race or ethnicity, colour, religious belief or creed, social origin or birth, language, national origin, political opinion, disability, HIV status, membership in a trade union or participation in union activities. Applicants should not be required to submit a photograph with their application, unless physical appearance can legitimately be considered as an inherent requirement of the job in question.

### 2.2.2 Shortlisting

Employers should use consistent selection criteria as the basis for shortlisting, matching these objective standards against the corresponding qualifications, skills, knowledge and experience of each applicant. Efforts to make the composition of the workforce more diverse may be a valid selection criterion.

#### 2.2.3 Selection and aptitude tests

Tests used for selection purposes should be specifically related to the requirements of the job in question and objectively measure applicants' actual or potential ability to do or be trained for the job.

### 2.2.4 Job interviews

(a) Interviewers should only ask questions that are relevant to assessing an applicant's suitability for the job in question and use consistent criteria for assessing each application. The interview panels should include both female and male interviewers.

(b) Interviewers should not ask job applicants personal information related to sex, race or ethnicity, colour, religious belief or creed, social origin or birth, language, national origin, political opinion, disability, HIV status, membership in a trade union or participation in union activities.



(c) If the position requires preparedness to accept certain responsibilities and willingness to accept particular working conditions, interviewers should give full details of the job requirements and ask the candidate if they will be able to meet all the requirements.

### 2.2.5 Pre-employment medical examinations

(a) Employers should not use pregnancy tests as a condition for hiring or continued employment, except in those limited situations where the work in question is prohibited or restricted for pregnant women under the law or there is a recognized or significant risk to the health of the woman and child.

(b) Tests for infectious diseases may not be required as a condition of hiring or of continued employment, except in cases where the occupational requirements for the job in question have been stipulated in law to include absence of the disease. Employers are strictly prohibited from requiring their employees or potential employers to undergo HIV/AIDS testing either prior to or during employment, however, measures to encourage workers to know their own HIV status through genuinely voluntary counselling and testing are recommended to prevent the disease from spreading.

(c) Employers may require job applicants to take a medical examination to assess their overall fitness for the job in question. The medical examination may not include testing for any specific disease or illness that does not have an immediate effect on a person's fitness to perform the job.

(d) Employers shall respect the confidentiality of workers' health status and not undertake any action that could lead to a breach of confidentiality.

### 2.2.6 Records

Employers should keep records of the assessment made at each stage of the recruitment process by the reviewers on the applicant's ability to meet the consistent selection criteria.



# 2.2.7 Recruitment through employment agencies and employment services

Where recruitment is done through a public or private employment agency the employer should advise the agency to comply with this Code. Where appropriate, employers should highlight to the agency that vacancies are open to all qualified persons without any discrimination on grounds prohibited under this Code.

# **2.3 Fair treatment during employment**

### 2.3.1 Pay and benefits

(a) Employers should pay employees remuneration commensurate with the value of the job they are performing. The value of the work should be determined with reference to the effort, skill, responsibility and working conditions related to the job in question. There should be no differences in pay due to gender, sex, marital status, race, colour, social class, belief, religion, HIV status, disabilities or for the reason of establishing, joining trade union and participating in trade union activities of the employees in question. Details of the pay schemes should be available to all staff.

(b) Employers should make sure that company rules, requirements and practices on access to benefits, such as commission, bonuses, allowances, performance pay or any other benefit arising from employment, do not discriminate against any group, as stipulated in Vietnamese law. This applies also to old-age benefits, medical benefits, maternity and paternity benefits and any other form of benefit payable by the employer as provided in collective agreements.



(c) Differences in pay for work of equal value may be justifiable only if they are related to differences in seniority or performance ratings, or as a remedy for a specific labour shortage in a particular job classification. Employers should ensure that performance appraisal systems applied to determine performance pay are free from discrimination and bias.

#### 2.3.2 Terms and conditions of work

Employers should make sure that all employees enjoy equal terms and conditions of work, including hours of work, assignment of work and duties, rest periods, annual leave, occupational safety and occupational health measures, equipment and tools, without any discrimination on the grounds covered by this Code.

#### 2.3.3 Performance appraisals

Employers should adopt formal appraisal systems which are based on fair and objective criteria free from discriminatory bias, with measurable standards for evaluating job performance. Employers should keep records of their employees' performance and conduct.

### 2.3.4 Training, advancement and promotion

(a) Whenever opportunities for training, advancement or promotion arise, employers should inform all eligible employees of the conditions and procedure for applying for these opportunities. Employers should assess all interested candidates based on fair and consistent selection criteria, giving adequate consideration to any affirmative action measures adopted in the company.

(b) Women and men should be provided opportunities to benefit from skills training in non-traditional trades. The special needs of workers with family responsibilities should be taken into account when establishing schedules or making other arrangements for training.



### 2.3.5 Termination of employment

(a) A decision to dismiss an employee should be based on documented poor performance or misconduct, as described in the law. Decisions to dismiss should be free from discriminatory bias. Employers should never dismiss or threaten to dismiss an employee on the basis of pregnancy, marital status or temporary absence from work for illness or injury. Employers of workers whose impairment renders them no longer qualified for the work they have been assigned should, rather than immediately dismissing the workers, consider adapting the conditions of work or, if such "reasonable accommodation" is not feasible, consider transfers to other posts.

(b) Employers shall never refuse renewal of fixed duration contracts for reasons related to sex, pregnancy, maternity leave, temporary absence from work because of illness or injury, or union membership or participation in union activities, or any other prohibited ground of discrimination covered under this Code.

(c) Where retrenchments are necessary, they should be carried out in a non-discriminatory manner in consultation with the concerned workers' organizations or, where these organizations are not present in the company, with representatives of directly concerned employees. Selection for retrenchment should be done based on fair and objective criteria. Adequate attention should be paid to company affirmative action measures.

(d) In Viet Nam, the statutory retirement age is 55 for women and 60 for men. However, this is not compulsory in the private sector and it is good practice to make retirement voluntary to allow for a gradual transition from working life to other activities. Age should not be considered a sufficient ground to terminate employment.



# 2.4 Creating a productive working environment

#### 2.4.1 Harassment

mployers should ensure that the work environment is free from harassment. Any type of violence, harassment, bullying or abuse, be it physical, sexual, verbal or non-verbal, undertaken on any of the grounds referred to in this Code, is prohibited. Employers are encouraged to adopt a policy of zero tolerance for harassment and to communicate the policy to all staff, clients, customers and other work-related parties.

#### 2.4.2 Maternity protection

(a) Employers should ensure maternity protection for all women employees of reproductive age in accordance with the *Labour Code*, the *Law on Social Insurance* and regulations. Maternity protection should include maternity leave in accordance with the law, cash and medical benefits, health protection, employment protection and assurances against discrimination, and reasonable accommodation for breastfeeding.

(b) All women employees of reproductive age shall be entitled to maternity leave for a minimum period of six months. Employers shall make regular and appropriate contribution to the Social Insurance Fund as stipulated by the law, using a calculation based on workers' actual take-home pay and not just basic wage. Employers should ensure that there is no discrimination between workers on fixed duration contracts and indefinite term contracts.



(c) If the working environment of a pregnant or breastfeeding employee involves risks, such as physical strain or exposure to hazardous agents, the health of the employee should be protected by eliminating these risks, adapting the working conditions and/or, if adaptation is not possible, temporarily transferring the employee to another post or providing paid leave.

(d) Employers should not, on the basis of an employee's pregnancy, make any employment decisions that negatively affect a pregnant employee's employment status, including decisions concerning dismissal, loss of seniority or deduction of wages. Article 123 of the Labour Code prohibits any application of disciplinary actions on employees who is pregnant, on maternity leave or breastfeeding a child under the age of 12 months. Maternity leave should be counted as work for purposes of calculating seniority and retirement benefits.

(e) Nursing mothers should be provided breastfeeding breaks and facilities to support continued breastfeeding upon returning to work. This could be incorporated into the legally mandated 60-minute break every working day with full wages for female employees nursing a child under the age of 12 months (Article 155.5, Labour Code).

### 2.4.3 Work-family balance

Employers should take the needs of employees with family responsibilities into account in the workplace. Family friendly workplace benefits, such as flexible work arrangements, family care leave or child care facilities, should be offered as appropriate.

### 2.4.4 Reasonable accommodation

(a) Employers should take reasonable measures to accommodate workers with special requirements related to health, disability, religion, family responsibilities or any other ground. Reasonable accommodation measures could include rearrangement of working time, the provision of special equipment, opportunities for rest breaks, time-off for medical appointments, sick leave, flexible leave to enable work-family balance, part-time work and return-to-work arrangements.

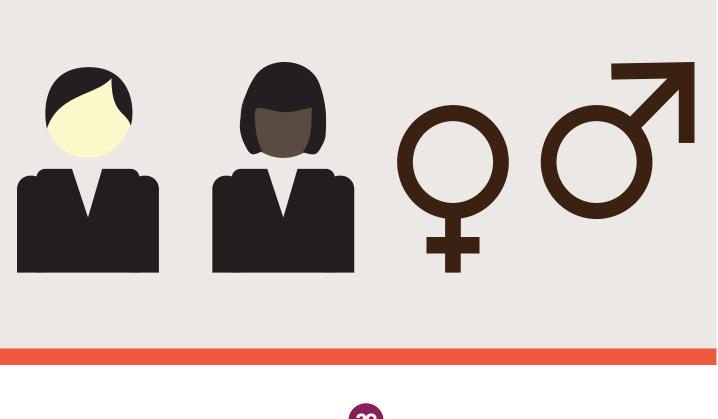


Reasonable accommodation means acknowledging that workers are different and have different needs, and that a small but deliberate effort often goes a long way in "saving the job without breaking the bank."

(b) Failure to provide accommodation to workers with disabilities is a violation of Article 33 of Law on Persons with Disabilities, unless such accommodation imposes a significant expense or difficulty (undue hardship) on the employer's business.

# 2.5 Fair treatment during employment

mployers should promote equality and non-discrimination in all their business practices and within the company's scope of control and influence. Employers should communicate positive images about diversity and equality and ensure that their customers, subcontractors, suppliers or other business partners and stakeholders are treated in a fair and non-discriminatory manner.





# **3 Possible methods** of implementation

# **3.1 Use of the Code**



Employers may put the Code into practice in many different ways. Outlined below are some of the most commonly used methods that have proven to be successful around the world. The list is not exhaustive, nor do any of the methods have to be followed in any prescribed order. Failure to follow any particular method should not be considered as evidence of failure to promote equal opportunity or treatment or to comply with legal obligations as such. Following any or all of the methods may, however, support an employer's claims that it has complied with all legal obligations.



Promoting equality and preventing discrimination at work in Viet Nam:

# **3.2 Commitment, responsibility and consultation**

(a) Employers should follow the guidelines set out in this Code and formally endorse them at the highest management level as widely accepted good practices. The Code should be integrated into company core management policies and practices, including existing human resources policies. Responsibility for the implementation of the Code should be assigned to a senior management representative.

(b) Procedures should be established to encourage compliance with the Code across a company's human resources management and business operations and, to the greatest extent possible, among suppliers, subcontractors and service providers.

(c) Employers should consult with workers' organizations or, where these organizations are not present in the company, with representatives of directly concerned employees on the ways and means of giving effect to the guidelines in this Code. Consultation does not mean that the employer gives up the authority over the final decision affecting the efficient operation of the company. Consultation means that, before taking such decision, the employer invites the views of employees, considers them in good faith and incorporates useful insights into the final decision. Consultation can prevent management decisions from unnecessarily offending human sensitivities. Consultation also helps to explore various efficient and workable methods for pursuing a management objective.

# **3.3 Human resources policies** and practices

(a) Employers should follow the guidelines set out in this Code in all recruitment and employment decisions in the company and align their existing human resources policies and practices with this Code.



(b) Employers are encouraged to adopt specific policies and measures to promote equal opportunity and treatment at work.

# 3.4 Communicating, raising awareness and building capacity

(a) Copies of the Code should be publicly displayed on company premises, and information about it should be disseminated among all employees and workers' representatives in a language that they understand.

(b) Activities should be undertaken to raise awareness on the Code among all employees to facilitate understanding and implementation of its provisions. All employees should be provided with information on what is and is not acceptable behaviour or practice in the workplace. Employees should exercise tolerance and understanding at the workplace to enhance workplace harmony.

(c) Employers should provide training to managers, supervisors and other relevant staff on their role in implementing this Code. They should be provided with practical information on how to apply the guidelines set out in this Code in the human resources management and business practices of the company.

(d) Commitment to the Code should be communicated to buyers, customers, clients, suppliers, subcontractors, business partners and relevant stakeholders, including workers' organizations and employee representatives, as appropriate.

# **3.5 Monitoring and corrective action**

Implementation of this Code should be regularly monitored to determine compliance with the Code and the efficiency of its implementation. Instances of non-compliance should be addressed as and when they are discovered, and steps should be taken to implement changes where necessary to ensure that such instances do not recur.



Promoting equality and preventing discrimination at work in Viet Nam:

# **3.6 Handling grievances**

Employees should have access to confidential means to report grievances related to noncompliance with this Code. Measures should be established to ensure that employees do not suffer disciplinary action for reporting grievances. Employers should develop procedures to document, handle and follow up on grievance reports.

# **3.7 Transparency and dialogue**

Implementation measures should include periodic communication with stakeholders about performance and progress related to the Code.

# **3.8 Application to suppliers and subcontractors**

Compliance with the Code should be a condition of business and integrated into contracts with suppliers, subcontractors and relevant business partners such as employment agencies. Employers should make compliance with the Code a condition of evaluation, selection and maintenance as a supplier.



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# THE BUSINESS CASE FOR EQUALITY AT WORK





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#### BOOKLET 1

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#### ${\bf 1} \ {\rm Introduction}$

**2** Guiding principles to promote equal opportunity and treatment and prevent discrimination at work

- ${\bf 3}$  Possible methods of implementation
- Practical guide in four parts

#### Booklet 1: The business case for equality at work

**1** Why should Vietnamese employers know about equality and non-discrimination?

2 Legal aspects of non-discrimination

#### Booklet 2: Tools to promote equality at work

- 1 What employers can do to promote equality
- 2 Basics of equality management
- **3** Planning and implementing equality measures
- 4 Dealing with discrimination-related complaints
- 5 Additional resources

#### Booklet 3: Recruitment practices that promote equality

- 1 Reviewing recruitment procedures
- 2 The recruitment process
- 3 Pre-employment medical examinations
- 4 Records and post-recruitment procedures
- 5 Induction training
- 6 Recruitment through employment agencies

### Booklet 4: Management practices that promote equality

- **1** Pay and benefits
- 2 Terms and conditions of work
- 3 Performance management and appraisals
- 4 Training and development
- 5 Promotion and career development
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#### **Case studies**

#### Booklet 1: The business case for equality at work

**1** Positive experiences of hiring workers with disabilities and HIV/AIDS

**2** Compelling business case for workplace diversity and equality – Fostering innovation and retaining talent

#### Booklet 2: Tools to promote equality at work

- 3 Discrimination in SA8000 and ISO 26000
- **4** Diversity management in European companies
- 5 Implementing an equality action plan in Viet Nam
- 6 Malaysian employers take action against sexual harassment
- 7 Female leadership and company profitability

8 What is the business case for hiring people with disabilities?9 Blue Ribbon Employer Council (BREC)

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- 11 Examples of discriminatory job advertisements
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#### **Booklet 4: Management practices that promote equality**

17 Maternity protection under Vietnamese law

# **Foreword by the VCCI**

t is with great pleasure that the Vietnam Chamber of Commerce and Industry (VCCI), presents this Code of Practice and the accompanying series of four guide booklets, jointly developed with the International Labour Organization (ILO) Bureau for Employers' Activities (ACT/EMP), to assist employers in promoting equality and preventing discrimination at work in Viet Nam.

Since ratifying the ILO Discrimination (Employment and Occupation) Convention, 1958 (No. 111) in 1997, Viet Nam has taken a number of major legislative steps to promote equality and non-discrimination in the workplace, which include prohibiting discrimination in the 2012 Labour Code. Preventing discrimination in the workplace is more than a legal obligation for employers, it also makes good business sense and represents an important component in being a socially responsible employer.

As a representative of Vietnamese employers, the VCCI aims to provide practical guidance to all employers in improving their business practices through the promotion of equality in non-discriminatory workplaces. It addresses questions that general managers, human resource managers, supervisors, workers' representatives and all company staff need to consider and apply in their daily work, including decisions related to recruitment, staff training, promotion, retrenchments and business practices such as sourcing and marketing.

The VCCI hopes that the Code of Practice and the accompanying series of four guide booklets will serve as useful references for employers. These materials are primarily intended to provide practical information, legal guidance and best practices from VCCI members.

We would like to express our appreciation to Ms Tran Thi Lan Anh of the VCCI Bureau for Employers' Activities, Ms Nguyen Thi Tuyet Minh of the VCCI Women Entrepreneurs Council and the VCCI Blue Ribbons Council for leading the development of the guide. We also thank Ms Nguyen Cuong Pham and Ms Nguyen Hong for providing expert guidance as well as VCCI member companies who participated the development of the guide. Finally, we would like to thank ILO ACT/EMP for supporting us along this journey.

We commend this guide to you and look forward to working with you.

Mr Vu Tien Loc President Vietnam Chamber of Commerce and Industry



# Foreword by the ILO

here is growing consensus that a diverse workforce significantly contributes to economic growth and development. In today's emerging markets, companies that seek to be leaders and set examples of building a productive workforce must address issues of discrimination in the workplace. Businesses that succeed in doing so create conditions for diversity and equality of opportunity and treatment in employment, and often going beyond what is required of the in national law. Employers who adopt such approaches may derive a number of business advantages, including a wider pool of talent from which to recruit, improved employee morale and loyalty, reduced exposure to legal challenges, reputational benefits and penetration of new markets. Overall, nondiscriminatory employment practices is not only the right thing, but also the smart thing for business to do.

Equality of opportunity and treatment in employment forms is enshrined in the ILO's Decent Work Agenda which promotes opportunities for all men and women to obtain decent and productive work in conditions of freedom, equity, security and human dignity. The ILO's Discrimination (Employment and Occupation) Convention (No. 111), adopted by ILO member States in 1958, remains the most comprehensive and widely ratified international instrument dedicated to the promotion of equality of opportunity and treatment in the world of work. The elimination of discrimination is one of the ground rules of a fair globalization and also an important condition for sustainable development.

It is therefore with great pleasure that the ILO-Bureau for Employers' Activities (ACT/EMP) has embarked on this partnership with the Vietnam Chamber of Commerce and Industry (VCCI) aimed at supporting the Chamber's efforts to prevent discrimination at the workplace and promote equal opportunities and treatment of all men and women in Viet Nam.

This set of five Guides on "Promoting equality and preventing discrimination at work in Vietnam" will hopefully help to raise awareness amongst VCCI's members on the economics behind having an inclusive workforce and providing better guidance to its members on non-discrimination. The Guides have been designed to establish a new VCCI training service on non-discrimination through the training of trainers. Advocacy materials to accompany the Guides will be developed and disseminated to members and other interested parties.

I would like to thank ILO colleagues who were involved in developing these Guides, including Jae-Hee Chang who led the coordination, Gary Rynhart for technical support and Alex Phuong Nguyen for supporting the development. I would also like to thank the ILO- Norway Partnership Cooperation for provision of funds necessary to develop the Guides and related activities.

### **Deborah France-Massin**

**Director** ILO Bureau for Employers' Activities



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**Esoftflow Co., Ltd**, Hanoi Esoftflow specializes in professional visualizations for the real estate sector and beyond. They have approximately 350 employees.

**Hoa Lan Joint Stock Company (Orchid JSC)**, Hung Yen Province, Viet Nam Orchid JSC was established in 2005 and specializes in domestic chemical products and multiple-layered cartons. It has approximately 100 employees.

**Jia Hsin Co., Ltd**, Long An Province, Viet Nam Jia Hsin Co., Ltd. is an FDI footwear manufacturing company in Vietnam. Established in Vietnam since 1991, Jia Hsin current has approximately 1,800 employees.

Kloon Ltd, Hanoi

Kloon specializes in professional software development projects, including development and software testing. Kloon currently has approximately 50 employees.

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The ILO and VCCI acknowledge and thank those involved in providing photographs for this publication, including Kloon Ltd. and Esoftflow Co, Ltd.



# Acronyms & abbreviations

ACT/EMP	Bureau for Employers' Activities	
ASEAN	Association of Southeast Asian Nations	
ILO	International Labour Organization	
MOLISA	Ministry of Labour, Invalids and Social Affairs	
SMEs	Small and medium-sized enterprises	
VCCI	VCCI Vietnam Chamber of Commerce and Industry	
VCGL	Vietnam General Confederation of Labour	





# The business case for equality at work: Introduction

he Vietnam Chamber of Commerce and Industry (VCCI), presents this Code of Practice and the accompanying four guides, jointly developed with the International Labour Organization (ILO) Bureau for Employers' Activities (ACT/EMP), to assist employers in promoting equality and preventing discrimination at work in Viet Nam. The package comprises five booklets: a Code of Practice for Employers and four practical guides on how to implement various aspects of equality in the workplace.

This is the first guide in the series. It presents reasons for employers to promote equality and non-discrimination at work in Viet Nam from two angles: business benefits and legal compliance. To justify the potential costs from implementing equality measures, this booklet highlights eight ways those measures will add competitive advantages to companies in the long run. Additionally, all companies have the obligation to comply with the law where they operate, and discrimination against employees is legally prohibited in both national and international law. For information on how employers can start looking into equality in their workplace, consult *Booklet 2: Tools to promote equality at work*.





## 1 Why should Vietnamese employers know about equality and non-discrimination?

mployers and business owners, whether of small or large enterprises, must respect certain legal obligations under domestic laws and international laws that Viet Nam has ratified. In today's context of deeper and wider international economic integration, the ability to compete and adapt to new challenges is important to business success. To this end, promoting equality and non-discrimination in the workplace will bring substantial benefits in the following two aspects: first, in practical terms, promoting equality and non-discrimination at work is required for good business operations; second, legally, companies must adhere to the legal requirements on equality and non-discrimination in the workplace.





# **1.1 Eight Practical reasons to embark on equality measures**

s a Member State of the Association of Southeast Asian Nations (ASEAN), Viet Nam is a critical economic player in the region, particularly as the region approaches economic integration in 2015. If Vietnamese businesses are to succeed in a more regionally and globally connected arena, they must remain competitive and be able to adapt to the changing environment. Promoting equality and non-discrimination in the workplace can provide business benefits in the following eight ways:

- **1 Improved ability to attract a skilled workforce** by promoting opportunities within a larger and more diversified pool of talent.
- **2** Increased staff retention and workforce satisfaction, and reduced employee turnover as a result of better workplace cooperation and understanding within the workforce.
- **3 Increased productivity** as a result of better understanding and appreciation of cultures and diversity within the workplace.
- **4 Improved innovation and creativity** from harnessing the varied backgrounds and knowledge of a diverse workforce.
- **5** Access to new market segments and improved customer satisfaction as a result of continuously updated policies and adaptation to changing workforce needs.
- **6** Brand development and enhanced reputation due to a cohesive workforce able to work with a diverse client base.
- **7 Reduced risk of workplace conflict**, given improved employee and management appreciation and respect for different cultures and backgrounds.
- **8 Reduced risk of litigation** as a result of better understanding and knowledge of equality and discrimination in the workplace.



Adopting equal treatment and non-discriminatory policies as a core company value will help to achieve those eight benefits. But these advantages also depend on adhering to principles of equality and non-discrimination in all company policies and practices — not just in human resources management, but in governance and strategy as well. It is important, furthermore, to apply sanctions for policy breaches. Policies and their consequences need to be clearly understood by both the employer and the respective management representatives and employees. Implementation of such policies should be regularly reviewed and reinforced in light of management performance and worker interactions.

Improving workforce productivity, attracting and retaining workforce with appropriate skills, and reducing workplace conflicts are three important areas where promoting equality can help to address business competiveness. In a survey of 321 executives of the top global companies, 56 per cent of respondents in Asia "strongly agreed" that there is a link between diversity and innovation. The survey also shows that Asian companies pay particular attention to diversity programmes related to age or nationality (see figure 1).<sup>1</sup>

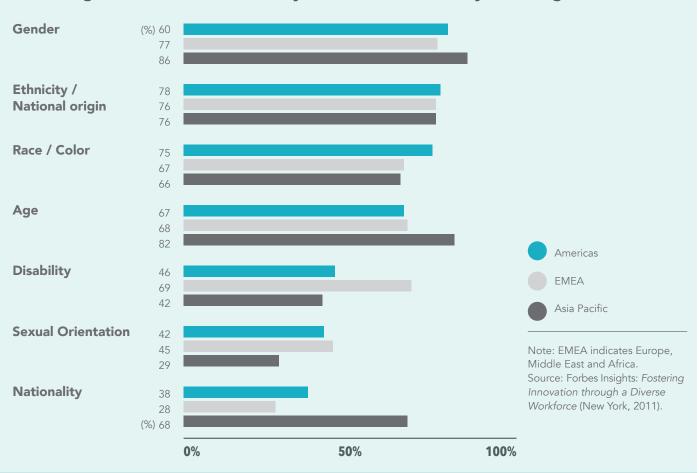


Figure 1. Elements of diversity and inclusion efforts by world region

<sup>1</sup>Forbes Insights: Fostering Innovation through a Diverse Workforce (New York, 2011).



In countries such as Viet Nam, where small and medium-sized enterprises (SMEs) employ the largest share of the labour force, getting equality right can help to boost a company's potential to capture a global audience and client base, even for smaller businesses. This section will explain key reasons for Vietnamese businesses to promote equality in the work place. If Vietnamese businesses want to engage with international companies, equality and non-discrimination matter.

## '1.1.1 Attract talent from a broader, more diverse pool

fter joining the World Trade Organization in 2007, Vietnam has become tightly integrated into the world economy. Exports and foreign investments are considered as the main drivers for growth. As the economy further develops and demand for skilled workers increases, employers in Viet Nam, including those in export-oriented and labour-intensive industries such as textiles, garments and footwear, will experience increasing difficulties in gaining access to advanced technologies and skilled labour which is needed for exporting and appealing to foreign markets<sup>2</sup>.

Skills shortage is cited as a key business challenge by many Vietnamese employers. In a study conducted through Ho Chi Minh City job placement centre in 2013, noticeable gaps were seen in the supply and demand of jobs, as illustrated in figure 2. Furthermore, as 2015 marks the beginning of freedom of movement of skilled labour within ASEAN, research has shown the possibility for skilled Vietnamese labourers seeking higher wage employment in other ASEAN countries<sup>3</sup>. This may be accentuated by government policies other ASEAN Member States, such as Singapore, enacted to attract foreign skilled labour, making recruitment of skilled labour in Viet Nam even more difficult.

<sup>2</sup>ILO and the Ministry of Labour, Invalids and Social Affairs (MOLISA): Labour and Social Trends in Viet Nam 2009/10 (Hanoi, 2010). <sup>3</sup> Overseas Development Institute (ODI): Jobs for the future – Vietnam case study (London, forthcoming).



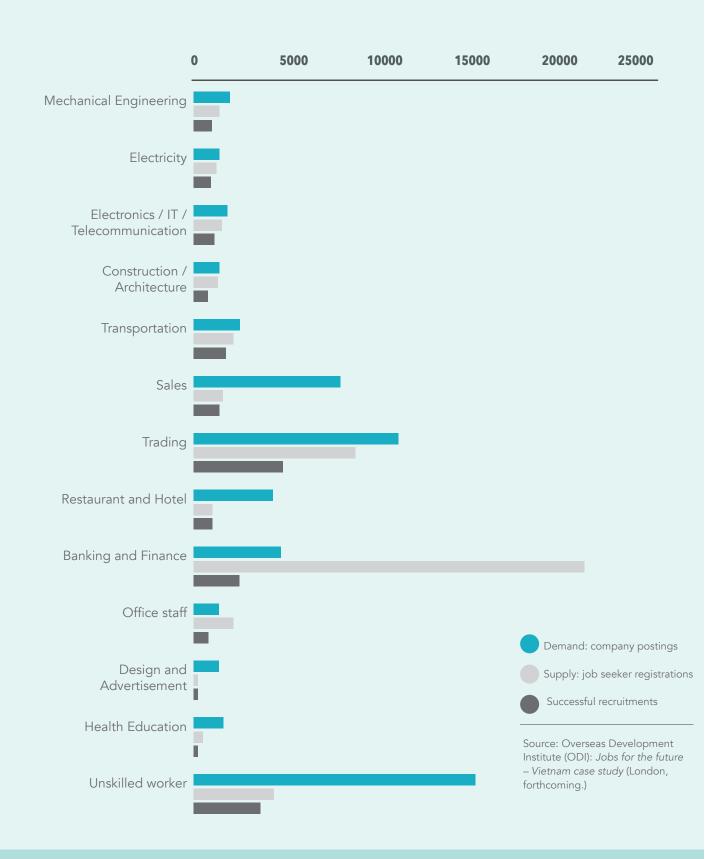


Figure 2. Mismatches in the supply and demand of labour, Ho Chi Minh City, 2013



As evidence shows sourcing talent will be increasingly difficult for employers in Viet Nam. However, **recognition as an equal opportunity employer** in the market, especially in the eyes of the younger population, can help companies attract recruits from a more diverse pool of skills and talents. If a business promotes equality and non-discrimination as foundation management principles, and implements them effectively in the workplace, employees will talk about the innovative, effective and transparent management practices of the company, effectively promoting the business as a preferred employer.

Research shows that commitment to non-discrimination provides access to a wider talent recruitment pool. Tapping into women's groups, alumni organizations and associations of people with disabilities, for example, can give businesses a competitive edge, where they are perceived as fair and equal employers. When all job applicants are assessed according to their merit, skills, experience, abilities and potential — free from discriminatory bias — employers are more likely to find the best person for the job.





### Case Study 1

### Positive experiences of hiring workers with disabilities and HIV/AIDS

From November 2010 to May 2011, seven enterprises in various industry sectors from Hanoi, Vinh Phuc and Hai Duong provinces took part in the ILO Opportunity for All programme, which aimed to assist manufacturing enterprises to develop policies and activities for people with disabilities and HIV/AIDS.

The participating enterprises shared some positive experience in working with these two groups:

• Industries employing relatively low skill workers that have high labour turnover such as garment and footwear, electronics assembly, packaging and so on are particularly receptive to the idea of recruiting people with disabilities. Though the education and training background for most people with disabilities in Viet Nam remains low, when approrpiate internal training is provided, they can be productive employees.

• Heavy industries and industries with a mobile workforce are particularly receptive to the HIV issue. Electric power generation factories, and construction and shipbuilding companies hire primarily male workers, and have workers off-site on construction sites. Participating enterprises in the programme were aware that their employees were at increased risk of exposure to HIV, thus they wanted to establish measures to ensure protection of these workers and raise their awareness. The companies already had good technical knowledge about HIV transmission and the relevant legislation, but they requested assistance to conduct HIV awareness training, educate workers and contact voluntary testing centres, doctors and so on.

The companies which hired people with disabilities reported that the recruited people were productive and content with the job. The companies are pleased with their experiences of hiring people with disabilities and suggested their connection with the organization of people with disabilities would ensure continued access to an untapped talent pool.

Source: ILO: Opportunity for All Final report on Pilot Program 2010–11 (Hanoi, 2011).



# **1.1.2 Retain talent, reduce employee turnover**

mployees 'jump jobs' in search of better opportunities whether in terms of pay or working
environment. Improved ability to retain employees can mean significant savings for
companies in a variety of areas, including the following:

• **Recruiting costs go down.** Training up new employees is costly and time-consuming, resulting in the loss of productivity and client engagement. New employees also need time to build relations with customers.

### • Institutional knowledge is sustained.

The company loses knowledge and experience when a staff member leaves. Retaining staff reduces the loss of institutional knowledge. "Promoting an inclusive workplace can help to increase productivity, improve motivation and retention, and provide inclusive and adaptable service to customers and clients."

Mr Vu Tien Loc, President, Vietnam Chamber of Commerce and Industry

In Viet Nam, there is a severe shortage of qualified labour for technical and management positions. In one comparative survey conducted by the Japan External Trade Organization (JETRO), the shortage of engineers, technicians and middle managers was found to be more apparent in Viet Nam than in other advanced ASEAN countries, such as Malaysia, Thailand, Indonesia and the Philippines.<sup>5</sup> As staff at this level are in high demand in Viet Nam, retaining qualified staff is an imperative for successful businesses.

Nevertheless, although these costs are significant, if managed well — and if the right people are recruited for the right position — staff turnover can introduce fresh ideas, new ways of thinking and innovation.

<sup>5</sup> Economist Intelligence Unit: Skilled labour shortfalls in Indonesia, the Philippines, Thailand and Viet Nam (2012).





Photo credit: Kloon

There are many ways to retain talent, but one proven mechanism is to provide **on-the-job development and training opportunities** that meet business needs in developing a productive, skilled and talented workforce. Rather than limit training to certain staff categories, these opportunities should be made available to all staff as equally as possible. Different training needs will be relevant to staff at different levels and in different roles. But it is important to ensure that all employees at every level have equal access to training opportunities that are relevant to their jobs and business needs.

Other good practices, in retaining talent and lowering employee turnover, include **policies that address the needs of the economic environment or changing profile of the labour force**. Examples include policies that promote good work-life balance; reviewing and improving maternity protection for all female staff; and creating flexible working hours if the business environment demands it and the employer can provide such a schedule. A working environment free of discrimination and harassment is also important for retaining skilled workers.

"Providing workers with the ability to plan their work schedule flexibly brings the employer a range of benefits which may include better morale, engagement and commitment to the organization. It also reduces absenteeism, tardiness and turnover of valued staff."

Ms Do Thuy Lan, Human Resources Office Manager, KLOON



### Case Study 2

### Compelling business case for workplace diversity and equality – Fostering innovation and retaining talent

For global companies, diversity is no longer simply a matter of creating a heterogeneous workforce, but of using that workforce to innovate and gain a competitive advantage in the marketplace. As innovation becomes more of a key differentiator for the world's largest companies, these organizations increasingly see having a diverse and inclusive workforce as critical to driving the creation and execution of new products, services and business processes. For executives in charge of diversity and inclusion, this is paramount to building the business case for their efforts.

A survey conducted by Forbes Insights of 321 executives at large global enterprises, 34 percent of which are based in Asia-Pacific, has the following main findings:

• Diversity is a key driver of innovation and is a critical component of success on a global scale. Senior executives are recognizing that a diverse set of experiences, perspectives and backgrounds is crucial to innovation and the development of new ideas. When asked about the relationship between diversity and innovation, a majority of respondents agreed that diversity is crucial to encouraging different perspectives and ideas that foster innovation.

• A diverse and inclusive workforce is crucial for companies that want to attract and **retain top talent.** Competition for talent is fierce in today's global economy, so companies need to have plans in place to recruit, develop and retain a diverse workforce.



• Not all diversity and inclusion strategies are identical. About a third of the executives surveyed said their companies have global strategies that allow for minimal regional deviation, while half said that their organizations have a global plan that also allows for different strategies and programmes in order to address regional needs or cultural differences.

• Diversity goals and priorities won't change significantly over the next three years.

When asked about their company's current diversity and inclusion priorities, 43 per cent cited retention and development of talent, followed by ensuring diversity in the workplace in general (35 per cent), developing a robust pipeline of diverse talent (29 per cent), and managing cross-generational issues (28 per cent).

• Responsibility for the success of company's diversity/inclusion efforts lies with senior **management.** In order for a diversity/inclusion plan to have real meaning, there needs to be accountability and oversight. Seven out of ten companies reported that the responsibility lies with senior managers and their board of directors.

• Significant progress has been made to build and retain diverse workforces, but there are still some impediments to companies' efforts. Respondents feel they have made progress in gender diversity, but they feel they have fallen short in areas such as disability and age.



# **1.1.3 Boost productivity**

or the past few decades, Viet Nam has relied on the attractiveness of cost-driven low-skill manufacturing to attract foreign investors. Nevertheless, wages in most of Viet Nam rose more than 15 per cent per year from 2008, jeopardizing the country's competitiveness with neighbouring countries such as Bangladesh and Cambodia that are engaged in similar industries.

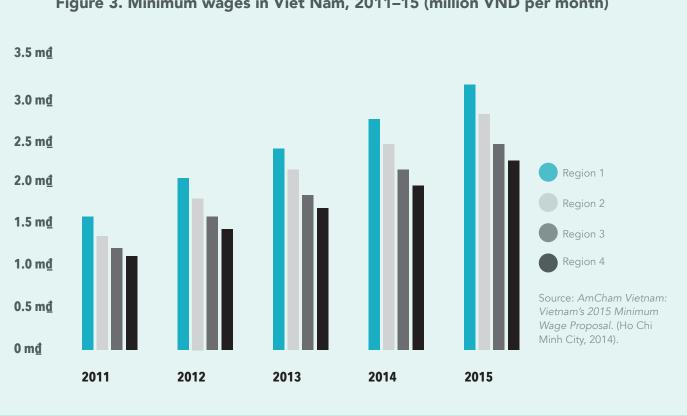


Figure 3. Minimum wages in Viet Nam, 2011–15 (million VND per month)

To address productivity, effective equality measures can help by improving employee motivation, commitment and morale. When employees feel valued, are equally treated and do not feel isolated, the general work atmosphere improves and employees tend to share more. Workers who feel that their input is respected and that they are fairly rewarded for their efforts will be motivated to strive harder for both their own well-being and the company's success.

Many companies in Viet Nam are devoting more effort to developing new products and improving their brand image. Success in these endeavours is linked to innovation and creativity. There is no better way to encourage innovation and product expansion than by soliciting the views of employees who interact directly with customers or other entities of their supply chains. Harnessing the ideas of those employees enables managers to really understand workplace challenges and adopt new and creative ideas (whether products or processes) to improve business services or enhance employee productivity. Experiences from organizations abroad show that having a diverse workforce can help businesses promote innovation and creativity, resulting in new ideas and new products.

Useful strategies to capture diverse knowledge in a firm include establishing committees responsible for particular areas of business, whether policies, social activities or feedback mechanisms; and involving staff in what are perceived as management activities, thereby helping to broadly foster new ideas and knowledge among the workforce.

See Case study 12: Female leadership and company profitability, in Booklet 2: Steps to promote equality at work.

## 1.1.4 Access new markets, improve customer satisfaction

arnessing the diversity of knowledge and ideas within a company also helps with strategic marketing and may improve customer satisfaction. For example, until a Chinese-speaking investor becomes more familiar with Viet Nam or the concerned company, he or she may be more comfortable interacting in the Chinese language. It may, therefore, improve the company's strategic position with the Chinese market to recruiting a Vietnamese national with an ethnic Chinese background.



It is important for business managers to understand the profile of their workforce, including factors such as the provinces and regions where they were raised, where they studied, if staff studied abroad and the languages staff speak that may be of advantage to the business. Foreign-language skills can prove an important resource in a globalizing business environment. Staff may have backgrounds that provide an opportunity to enhance customer satisfaction, or it may be necessary to recruit new staff that can better serve clients and customers.

In short, business managers should aim to be aware of each employee's talents and potential to improve business dealings, and should make use of the full talents of their workforce. Business managers should do more than merely provide equal opportunities and cultivate creativity. They should really examine the current workforce and identify skills and talents that can improve the existing business and help it to access new markets.

# **1.1.5 Improve reputation and brand image**

good public image and a positive company reputation are important factors in attracting talented job seekers. They are also important in becoming part of national, regional and global supply chains.

Price remains the most important factor in determining sourcing relationships and finding new suppliers. Globally, however, international companies are increasingly conscious of sourcing responsibly, ensuring that their supply chain maintains international standards of compliance and that the companies they work with are free of discrimination. Gaining a reputation as an equal opportunity employer that does not discriminate helps companies to attract better business opportunities. Customers and clients of such a business will recommend it as a reliable source.





## 1.1.6 Access new markets, improve customer satisfaction

mplementing equality measures mitigates labour-management disputes and conflict in the workplace. In the garment sector in particular, industrial relations have been characterized by frequent disputes that often result in strikes. In many cases, strikes result from miscommunications on the factory floor and misunderstandings between management and workers, sometimes resulting from different cultural perspectives.

Effective equal opportunity mechanisms ensure that employees view management decisionmaking as equal and fair, and enable employees to register grievances or other concerns. To this end, the following measures are recommended:

• Install an employee feedback box where employees can submit a concern or idea in complete confidence it will remain anonymous.



• Set up committees that include employee representatives to provide input to policy, new developments and the discussion of grievances. Such committees can go a long way towards mitigating workplace conflict and proactively addressing employee concerns. This measure is appropriate for the garment sector and for all enterprises, including SMEs.

An employee who feels fairly treated will demonstrate greater engagement and productivity. Confidence in management and an improved workplace environment and cooperation also follow where an employee is able to solve workplace problems in partnership with management. Such initiatives should remain confidential and not leave the employee vulnerable to repercussions.

To maintain workplace harmony and foster good workplace relations, employers and workers have a responsibility to support each other. Employers need to ensure that employees are treated equally and fairly and that the workplace remains free of discrimination. Employees need to have the confidence to communicate their ideas freely. Both the employer and the employee should ensure that the workplace environment is open to feedback and suggestions and that such feedback is always recognized appropriately and treated in the strictest of confidence.

# **1.1.7 Reduce risk of workplace conflict**

mproved workplace harmony leads to reduced workplace conflict. Conflict, where managed inappropriately, often results in the loss of employees.

Effective equality and non-discrimination policies help all employees and managers to better appreciate and respect each other's perspectives — including the views of men and women and those from ethnic minority and other backgrounds that may make them vulnerable to discrimination — while better harnessing the full and diverse potential of all employees.

Reducing the risk of workplace conflict makes it easier to implement equality and non-discrimination policies, thereby reducing the risk of litigation.



# 1.1.8 Reduce risk of litigation



he Vietnamese Labour Code prohibits discrimination and establishes penalties for violations. Individuals or groups of workers who feel that they have been discriminated against can take their case to conciliation and, if conciliation fails, to the courts or the local People's Committee. To avoid financial sanctions and damage to their reputation, employers should ensure that their recruitment and human resources management systems fully comply with legal requirements.

Related penalties have already been imposed in Viet Nam. Large- and small-business owners alike should remain mindful of the risks related to employment and liabilities inherent in a business as a legal entity, including risks where managers or employees engage in inappropriate behaviour in the workplace.

Workplace policies that incorporate equality and non-discrimination measures help to establish principled standards and to ensure that employees clearly understand the company's standards of professionalism and their own obligations. Meanwhile, employers and managers need to demonstrate that policy breaches have consequences.



## **2 Legal aspects of non-discrimination** Human resources practices

Il companies, whether large or small, that want to ensure respect for equality and nondiscrimination principles should, as an initial focus, review all human resources practices, including recruitment, remuneration, social benefits, terms and conditions of work, access to training, advancement and promotion, and termination of employment contracts.

### **Business Practices**

Companies should also promote equality and non-discrimination in their business practices. All customers and clients should be treated equally regardless of their social origin, ethnicity, disability or other personal factors. Company marketing and public relations materials should be purged of either implicit or explicit discriminatory or stereotyping messages. Business decisions related to such matters as sourcing, contracting and buying or leasing of land should also be free of discriminatory biases. Companies with strong commitments to equality include non-discrimination in their supply-chain management policies and procurement policies, and also require their suppliers or subcontractors to adhere to this principle.

### **DID YOU KNOW?**

Viet Nam ratified ILO Convention No. 111 in 1997. Employers should review and seek guidance from the Convention and its application to strengthen their implementation of national nondiscrimination legislation.

Download the Convention at http://www.ilo.org/declaration/info/factsheets/ WCMS\_DECL\_FS\_85\_EN/lang—en/index.htm.

Companies in need more information on equality and business practices are invited to contact VCCI.

# 2.1 What does equality and non-discrimination at work mean?

n 1997, Viet Nam ratified the ILO Discrimination (Employment and Occupation) Convention, 1958 (No. 111). The ratification of the Convention obligates employers, workers and the Government to take effective measures to ensure that legislation and operating practices align with international standards.

See definition of Discrimination at 2.2 Terms used in the Code, Code of Practice for Employers.

Aside from the seven grounds specified in the Convention, additional grounds of discrimination may be added at the national level.

The **Vietnamese Labour Law** stipulates a general prohibition against discrimination at work in this way:

"All citizens are equal before the law. No one shall be discriminated in his or her political, civic, economic, cultural, and social life" (2013 Constitution).

The Vietnamese Constitution and national laws prohibit discrimination on grounds of gender, race, colour, social class, marital status, belief, religion, HIV status, disabilities or for the reason of establishing or joining a trade union and participating in trade union activities. Adding trade union activities, disabilities and HIV status and excluding political opinion from the grounds covered by Convention No. 111 brings the total number of explicitly prohibited grounds of discrimination in Viet Nam to seven areas.

### **DID YOU KNOW?**

Discrimination legislation covers the entire employment cycle from sourcing to separation.

Discrimination legislation applies to all types of workers, casual, part-time, fixedduration, and full-time contract.

This guide and the Code of Practice are useful tools to start reviewing and discussing equality and discrimination in the workplace.

For more information on Viet Nam's laws on equality and non-discrimination, see tips and tools 1.

### **Tips and tools 1** Key provisions on non-discrimination in Vietnamese law

### GENERAL NON-DISCRIMINATION PROHIBITIONS

"All citizens are equal before the law. No one shall be discriminated in his or her political, civic, economic, cultural, and social life." (2013 Constitution, Article 16.1 and 16.2).

"Citizen has the right to work and to select career, job, and workplace. Worker shall be provided equal and safe conditions of work and shall be paid with salary and enjoy break policy. Discrimination, forced labour, and employment of worker under minimum age of labour are strictly prohibited." (2013 Constitution, Article 35.1, 2 and 3).

"Prohibited acts: Discriminating on the basis of gender, race, colour, social class, marital status, belief, religion, HIV status, disabilities or for the reason of establishing, joining trade union and participating in trade union activities." (Labour Code 2012, Article 8.1).

### • GENDER EQUALITY

"Male and female citizens have equal rights in all fields. The State has a policy to guarantee equal gender rights and opportunities... Sex discrimination is strictly prohibited." (2013 Constitution, Article 26.1 and 26.3)

"Employers shall ensure that the wage is paid equally without gender-based discrimination against employees performing work of equal value." (2012 Labour Code, Article 90.3)

"The employer must not dismiss a female employee or unilaterally terminate the employment contract of a female employee due to the employee's marriage, pregnancy, maternity leave,



or her nursing a child under 12 months of age, except when the employer, who is an individual, dies, or is declared by the court as having lost the capacity of civil acts, as missing or dead, or the employer, who is not individual, ceases its business operation." (2012 Labour Code, Article 155.3)

### • SEXUAL HARRASSMENT

"Everyone shall enjoy inviolability of the person and the legal protection of his or her life, health, honour and dignity; and is protected against torture, harassment and coercion, and any form of violation of his or her life and health, and offence of honour and dignity." (2013 Constitution, Article 20.1)

"Prohibited acts: Maltreating a worker, committing sexual harassment at the workplace." (2012 Labour Code, Article 8.2).

### • PERSONS WITH DISABILITIES

"The state shall create equal opportunities for the citizen to enjoy social welfare, develop a system of social security, exercise a policy assisting old people, disabled, poor people, and people with other difficult circumstance." (2013 Constitution, Article 59.2).

"State's policy on labour: To ensure gender equality principles and to stipulate labour and social policies to protect female workers and other workers such as disabled workers, elderly workers, and minor workers." (2012 Labour Code, Article 4.7)

"State's support polices on employment promotion: The State shall formulate the unemployment insurance policy, self-employment support policies, and assist employers who employ a large number of workers who are female, disabled people, and people of ethnic minorities." (2012 Labour Code, Article 12.2)

"Employers shall provide reasonable accommodation with respect to working conditions, working tools, and occupational safety and health measures, which are suitable for workers with disabilities and shall take care of their health on a regular basis. Employers must consult with workers with disabilities before deciding on matters of relevance to the rights and interests of the workers with disabilities." (2012 Labour Code, Article 177)



"Agencies, organizations, enterprises and individuals may neither refuse to recruit persons with disabilities who fully satisfy the recruitment conditions nor set recruitment criteria in violation of law in order to restrict working opportunities of persons with disabilities...

Agencies, organizations, enterprises and individuals employing persons with disabilities shall, depending on their specific conditions, arrange jobs and ensure the working conditions and environment suitable to these persons" (2010 Law on Persons with Disabilities, Article 33.2 and 33.3).

### • PERSONS LIVING WITH HIV AND AIDS

"1. The employer shall be responsible for: a/... education on ... anti-stigmatization and antidiscrimination against HIV-infected people ...;b/ Arranging jobs suitable to the health and professional qualification of HIV infected labourers; c/ Facilitating employees' participation in HIV/ AIDS prevention and control activities;...

2. The employer shall not be allowed to: a/ Terminate the labour or job contract of an employee or cause difficulties to this person in his/her work on the ground that such person is infected with HIV; b/ Force a physically fit employee to change the job he/she has been doing on the ground that such person is infected with HIV; c/ Refuse to give a salary raise to or to promote an employee, or fail to ensure his/her legitimate rights or benefits on the ground that such person is infected with HIV; d/ Request a job applicant to have an HIV test or produce an HIV test result, or refuse to recruit a person on the ground that such person is infected with HIV; except for the case specified in Clause 3, Article 28 of this Law" (i.e. there is a judicial or official request for the test) (2006 Law on HIV/AIDS prevention and control, article 14).

### TRADE UNION MEMBERSHIP

"Prohibited acts for employers related to the formation, joining and operation of trade union: ... Discriminate against a worker with regard to wages, hours of work and other rights and obligations in labour relations to obstruct the workers to form, join and operate trade union" (2012 Labour Code, Article 190.4).



### • CASUAL WORKERS

"The part time employee shall be entitled to the same remuneration, and rights and responsibilities as a full time employee. He/she shall be entitled equality in opportunities and treatment, and to a safe and hygienic working environment" (2012 Labour Code, Article 34.3).

### • **DISPATCH LABOUR**

"Ensuring that the wage of the leased employee is not lower than the wage of a regular employee of the hiring party who has an equal qualification and performs the same work or work of equal value" (2012 Labour Code, Article 56.5).

To have a clear comparison between Convention No. 111 and Vietnamese Labour Code on the prohibited grounds of discrimination, see tips and tools 2.





### **Tips and tools 2** Comparison of international and national legislation on discrimination in Viet Nam

Discrimination	Convention No.111	Vietnamese national legislation (Art. 8)
<b>1</b> Gender, sex, marital status	~	~
<b>2</b> Race, colour	~	~
<b>3</b> Social class	~	~
<b>4</b> Belief, religion	~	~
<b>5</b> HIV status	~	<ul> <li>Image: A set of the set of the</li></ul>
<b>6</b> Disability	~	~
<b>7</b> For the reason of establishing, joining trade union and participating in trade union activities	~	~
8 Political opinion	~	~



#### • LEGAL REQUIREMENTS

Equal opportunity and equal treatment in employment means that all persons, regardless of sex (gender)<sup>6</sup>, ethnicity, religious belief or any other personal characteristic, can participate in the labour market according to their capacity, without interference of discrimination or bias.

The principle of equal opportunity and treatment applies to all employees, including regular workers and casual workers, part-time workers, subcontractors and those on commission.<sup>7</sup> Employers should follow the guidelines set out in this Code of practice and the accompanying series of four guide booklets. All managers, supervisors and other staff in the company should begin by familiarizing themselves with the principles set out in the Code of practice and then, by applying them, take the Code even further. This will help to ensure respect for equality, while encouraging all concerned to exercise tolerance and understanding regarding diversity in the workplace and, in so doing, enhance workplace harmony.

At the enterprise level, observing these principles means that all recruitment and employment decisions should be made solely with reference to the merit, skills, experience or abilities of the applicant or employee. Companies can also review team diversity in terms of gender balance and ethnicity, for example, and adopt affirmative action measures to promote both equality and diversity.

Employers and managers should try not to stereotype. They should not make assumptions or generalizations about the abilities and aptitude of employees based on their personal features.

Instead, they should assess each person with reference to his or her individual abilities and aptitudes. Discriminatory bias, prejudices or stereotyped assumptions should never be allowed to interfere in recruitment or employment decisions.



<sup>&</sup>lt;sup>6</sup> In this publication "sex" and "gender" are used interchangeably. Gender refers to the social differences and relations between men and women that are learned, vary widely within and between cultures, and change over time, while sex is about biological functions that are universal and are generally difficult to change. In recent years the term gender has started to replace the term sex in day-to-day language. Most laws and other legal texts refer to sex discrimination. However, some laws and many policy documents have also started to use the term gender discrimination.

<sup>&</sup>lt;sup>7</sup> The terms employee and worker are used interchangeably in this publication. The principle of equality of opportunity and treatment in employment and occupation covers all persons working for an employer, regardless of their contractual status. It also applies to self-employed workers, including all members of ethnic groups pursuing traditional livelihoods.

## **2.2 Recognizing discrimination in the workplace**

discriminatory act is normally not a stand-alone event. Victims often experience such treatment repeatedly in various ways.

Harassment also constitutes a form of discrimination, where it is undertaken on the basis of person's sex, ethnicity, disability or other grounds covered in the national law and Convention No. 111. To this respect, Viet Nam has introduced a voluntary Code of Practice against Harassment in the Workplace in May 2015.

See "Harassment", Section 2.2 Terms used in the Code, Code of Practice for Employers.

As described in Convention No. 111, discrimination does not entail proof that the employer, manager or supervisor intended to discriminate. Action taken without intention to discriminate remains unlawful discrimination, if it leads to unequal employment outcomes for a worker or group of workers based on such personal characteristics as sex or skin colour.

#### How to identify discrimination at work

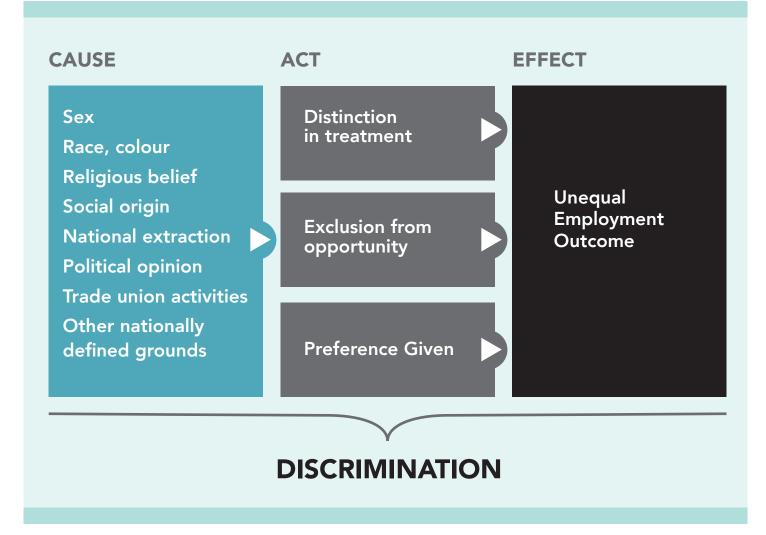
The definition of discrimination in Convention No. 111 includes three components that are useful in identifying workplace discrimination:

- an act of making a distinction in such a way as to either exclude or favour somebody;
- a prohibited ground giving rise to this act (for example, sex or ethnicity); and
- an outcome that has a negative impact on a certain group of workers.

If an action taken by anyone in the workplace includes all three components, the person who has been negatively impacted has been discriminated against (see tips and tools 3).



## **Tips and tools 3** Three components of discrimination, based on Convention No.111



In human resources policy or practices, discrimination may take different forms, including the forms listed below.

#### **DISTINCTION IN TREATMENT**

• Paying different salaries and benefits for women and men employees doing work of equal value.

• Dismissing an employee on the grounds of pregnancy or trade union leadership.



#### **EXCLUSION FROM OPPORTUNITY**

Refusing to hire a job applicant because of an HIV infection.

 Deciding not to promote a competent, dedicated and otherwise suitable woman just because she has a child.

#### PREFERENCE GIVEN

- Giving preference to persons from one's home country in promoting people to supervisory or managerial positions.
- Hiring only Kinh workers in ethnic minority areas.

OF For "Different forms of discrimination", see Section 2.2 Terms used in the Code, Code of Practice for Employers

## Examples of practices that can lead to discriminatory workplace practices **DISTINCTION IN TREATMENT**

- Preference for working with certain people because of a particular characteristic rather than because of merit.
- Not including someone's ideas, inputs or recommendations because of personal bias.
- Making an effort to denigrate others. Failing to show respect for the ideas of others.
- Making negative remarks regarding someone's sex, background or other personal characteristics.
- Withholding approval or expenses based on a bias against some personal feature.

#### **EXCLUSION FROM AN OPPORTUNITY**

- Not mentoring or transferring skills because someone is not of equal class or education.
- Not encouraging development or allocating challenging tasks because of a personal bias.

#### PREFERENCE GIVEN

- Only inviting certain colleagues to social or networking events.
- Only inviting certain colleagues to have lunch with you.
- Not managing a challenging situation among employees equally and giving preference to certain people.
- Excluding people from gatherings outside of work, because of some inherent personal characteristic.



## 2.3 What discrimination is not

n exceptional situations, difference in treatment, exclusion from opportunity or extension of preference may be legitimate, and may not necessarily constitute discrimination. Examples of such situations include the following:

• A personal characteristic such as sex, ethnicity or absence of a certain disability may be an inherent requirement of a specific job. This means that the job can only be performed by a person with these characteristics.

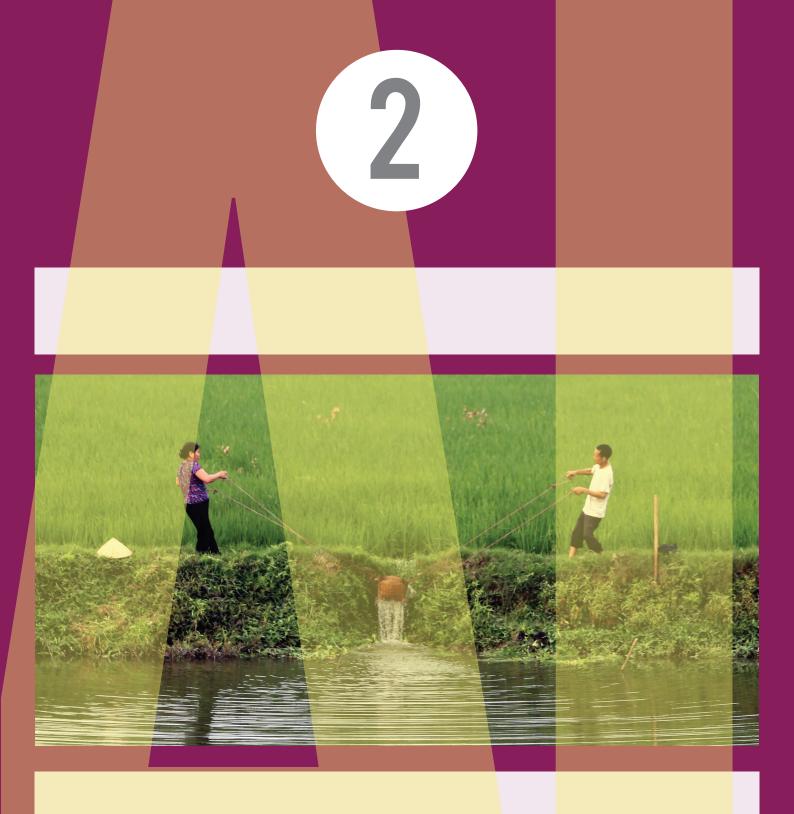
• It may be necessary to exclude a person from certain kinds of employment because employing him or her could prejudice the security of the State.

• It may be legitimate to providing special measures to support certain groups of workers when such measures rectify existing imbalances and inequalities (affirmative action), or address the need for special protection or assistance (maternity protection).

See Tips & tools 12: When inherent job requirements supersede equality, in Book 3: Recruitment practices that promote equality.



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# STEPS TO PROMOTE EQUALITY AT WORK





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- ${\bf 3} \ {\rm Possible} \ {\rm methods} \ {\rm of} \ {\rm implementation}$
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**1** Why should Vietnamese employers know about equality and non-discrimination?

2 Legal aspects of non-discrimination

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## Foreword by the VCCI

t is with great pleasure that the Vietnam Chamber of Commerce and Industry (VCCI), presents this Code of Practice and the accompanying series of four guide booklets, jointly developed with the International Labour Organization (ILO) Bureau for Employers' Activities (ACT/EMP), to assist employers in promoting equality and preventing discrimination at work in Viet Nam.

Since ratifying the ILO Discrimination (Employment and Occupation) Convention, 1958 (No. 111) in 1997, Viet Nam has taken a number of major legislative steps to promote equality and non-discrimination in the workplace, which include prohibiting discrimination in the 2012 Labour Code. Preventing discrimination in the workplace is more than a legal obligation for employers, it also makes good business sense and represents an important component in being a socially responsible employer.

As a representative of Vietnamese employers, the VCCI aims to provide practical guidance to all employers in improving their business practices through the promotion of equality in non-discriminatory workplaces. It addresses questions that general managers, human resource managers, supervisors, workers' representatives and all company staff need to consider and apply in their daily work, including decisions related to recruitment, staff training, promotion, retrenchments and business practices such as sourcing and marketing.

The VCCI hopes that the Code of Practice and the accompanying series of four guide booklets will serve as useful references for employers. These materials are primarily intended to provide practical information, legal guidance and best practices from VCCI members.

We would like to express our appreciation to Ms Tran Thi Lan Anh of the VCCI Bureau for Employers' Activities, Ms Nguyen Thi Tuyet Minh of the VCCI Women Entrepreneurs Council and the VCCI Blue Ribbons Council for leading the development of the guide. We also thank Ms Nguyen Cuong Pham and Ms Nguyen Hong for providing expert guidance as well as VCCI member companies who participated the development of the guide. Finally, we would like to thank ILO ACT/EMP for supporting us along this journey.

We commend this guide to you and look forward to working with you.

Mr Vu Tien Loc President Vietnam Chamber of Commerce and Industry



## Foreword by the ILO

here is growing consensus that a diverse workforce significantly contributes to economic growth and development. In today's emerging markets, companies that seek to be leaders and set examples of building a productive workforce must address issues of discrimination in the workplace. Businesses that succeed in doing so create conditions for diversity and equality of opportunity and treatment in employment, and often going beyond what is required of the in national law. Employers who adopt such approaches may derive a number of business advantages, including a wider pool of talent from which to recruit, improved employee morale and loyalty, reduced exposure to legal challenges, reputational benefits and penetration of new markets. Overall, nondiscriminatory employment practices is not only the right thing, but also the smart thing for business to do.

Equality of opportunity and treatment in employment forms is enshrined in the ILO's Decent Work Agenda which promotes opportunities for all men and women to obtain decent and productive work in conditions of freedom, equity, security and human dignity. The ILO's Discrimination (Employment and Occupation) Convention (No. 111), adopted by ILO member States in 1958, remains the most comprehensive and widely ratified international instrument dedicated to the promotion of equality of opportunity and treatment in the world of work. The elimination of discrimination is one of the ground rules of a fair globalization and also an important condition for sustainable development.

It is therefore with great pleasure that the ILO-Bureau for Employers' Activities (ACT/EMP) has embarked on this partnership with the Vietnam Chamber of Commerce and Industry (VCCI) aimed at supporting the Chamber's efforts to prevent discrimination at the workplace and promote equal opportunities and treatment of all men and women in Viet Nam.

This set of five Guides on "Promoting equality and preventing discrimination at work in Vietnam" will hopefully help to raise awareness amongst VCCI's members on the economics behind having an inclusive workforce and providing better guidance to its members on non-discrimination. The Guides have been designed to establish a new VCCI training service on non-discrimination through the training of trainers. Advocacy materials to accompany the Guides will be developed and disseminated to members and other interested parties.

I would like to thank ILO colleagues who were involved in developing these Guides, including Jae-Hee Chang who led the coordination, Gary Rynhart for technical support and Alex Phuong Nguyen for supporting the development. I would also like to thank the ILO- Norway Partnership Cooperation for provision of funds necessary to develop the Guides and related activities.

**Deborah France-Massin Director** ILO Bureau for Employers' Activities



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**Esoftflow Co., Ltd**, Hanoi Esoftflow specializes in professional visualizations for the real estate sector and beyond. They have approximately 350 employees.

**Hoa Lan Joint Stock Company (Orchid JSC)**, Hung Yen Province, Viet Nam Orchid JSC was established in 2005 and specializes in domestic chemical products and multiple-layered cartons. It has approximately 100 employees.

**Jia Hsin Co., Ltd**, Long An Province, Viet Nam Jia Hsin Co., Ltd. is an FDI footwear manufacturing company in Vietnam. Established in Vietnam since 1991, Jia Hsin current has approximately 1,800 employees.

Kloon Ltd, Hanoi

Kloon specializes in professional software development projects, including development and software testing. Kloon currently has approximately 50 employees.

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The ILO and VCCI acknowledge and thank those involved in providing photographs for this publication, including Kloon Ltd. and Esoftflow Co, Ltd.



## **Acronyms & abbreviations**



- BREC Blue Ribbon Employer Council
  - **CEO** Chief executive officer
  - **CSR** Corporate social responsibility
  - **EOC** Equal Opportunities Commission (Hong Kong, China)
  - ILO International Labour Organization
  - **ISO** International Organisation for Standardization
- MEF Malaysian Employers Federation
- **PWD** People with disabilities
- SAI Social Accountability International
- SMEs small and medium-sized enterprises
- **TAFEP** Tripartite Alliance for Fair and Progressive Employment Practices (Singapore)
  - **VCCI** Vietnam Chamber of Commerce and Industry



# Managing equality in the workplace: Introduction

he Vietnam Chamber of Commerce and Industry (VCCI), presents this Code of Practice and the accompanying four guides, jointly developed with the International Labour Organization (ILO) Bureau for Employers' Activities (ACT/EMP), to assist employers in promoting equality and preventing discrimination at work in Viet Nam. The package comprises five booklets: a Code of Practice for Employers and four practical guides on how to implement various aspects of equality in the workplace.

This, the second guide, outlines a number of tools which assist employers during the process of implementing equality policy. The tools in this booklet are structured chronologically, giving employers advices on how to start looking at equality and non-discrimination at work, and then how to follow up. However, for employers who have started, it is recommended that they go directly to the relevant tools instead of reading from beginning to end. Various steps in this guide might not be applicable to micro and small enterprises and can be skipped. Overall, these tools are offered as suggestions and should be adapted to suit individual circumstances in each firm.

For an in-depth survey into discrimination at the recruitment stage, consult Booklet 3: Recruitment practices that promote equality. Firms that are concerned about discrimination during particular stages of employment are recommended to consult Booklet 4: Management practices that promote equality.





Steps to promote equality at work

## 1 What employers can do to promote equality

efore embarking on the implementation of equality and non-discrimination at work, employers and the managers need to understand why it is important. In short, there are two reasons: First, in practical term, promoting equality and non-discrimination at work is required for good business operations.

Second, legally, companies must adhere to the legal requirements on equality and nondiscrimination in the workplace.

See Eight reasons to embark on equality measures, Booklet 1: The business case for equality at work

Promoting equality in company practices means integrating equality as a key value within core company management policies and practices. The key to successful equality promotion is a step-by-step rethinking of human resource management practices to ensure they are free of bias or discrimination. Apart from human resources practices, companies should take nondiscrimination as a guiding principle in their business practices, including customer service, marketing and sourcing.





"As an inclusive business, we benefit from high productivity, attracting new talent, increasing employee commitment and better brand reputation, so inclusion makes good business sense."

Ms Nguyen Thuy Ha, Human Resources and Office Manager, Esoftflow

In setting concrete objectives, targets and timeframes for incorporation of equality concerns in company human resources practices and business operations, most companies adopt special equality policies and action plans. An equality policy is a document where the company formally commits at a high level to promotion of equality. Policies and plans should as often as possible be planned and implemented in consultation with workers' organizations or, where in companies where these organizations do not exist, with representatives of directly concerned employees.

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See Commitment, responsibility and consultation, section 3, Code of Practice for Employers.



Steps to promote equality at work

## Rethinking human resources management and business practices

o ensure equality and non-discrimination in company recruitment and employment practices, employers should establish a structured human resources management system based on fair and objective criteria. Not many companies have formal human resources systems in Viet Nam; however, this should not stop businesses from pursuing equal and nondiscriminatory policies.

In becoming an equal opportunity employer, it is best to start with a review of human resources policies and their relevance, among other things, for sourcing, recruitment, remuneration, benefits, terms and conditions at work, access to training, promotion and termination.

The induction programme for new employees must include education about equality and discrimination, thus ensuring from their first working day that staff are sensitive to these issues.

Equality in human resources practices means ensuring that decisions related to all the above aspects of recruitment and employment are transparent, based on fair, objective and relevant criteria. It is also a good practice<sup>1</sup> to adopt proactive measures such as affirmative action<sup>2</sup>, thereby promoting equality and diversity among the company workforce. Transparent procedures and objective criteria ensure that every employee is treated according to his or her merit and contributions.

#### **DID YOU KNOW?**

In Viet Nam, companies, where people with disabilities consist of at least 30 per cent of the workforce, receive a range of benefits from the government, including exemptions from enterprise income tax, loans at preferential interest rates, priority and rent exemption in leasing land, groundwater and surface water, according to the Law on Persons with Disabilities.

To fully realize the benefits that employment equality and diversity can deliver to businesses, employers may also take proactive measures, including affirmative action, to promote equal opportunities and treatment at work for other groups of workers, particularly women. Companies also have obligations towards their clients, customers, subcontractors, suppliers and other business partners and stakeholders. Companies should ensure that no customers are treated in a discriminatory manner, for example refused a service on the basis of their ethnicity or disability. Discriminatory biases should not affect such business decisions as selection of subcontractors or suppliers. When buying or leasing land for business purposes, companies should ensure that they do not contribute to displacement of the previous inhabitants of the area, including indigenous peoples. Ensuring that company marketing materials communicate positive images about diversity and equality is a good practice that can improve brand image and help with accessing new market segments.

Many companies address discrimination and promote equality and diversity as part of a broader programme of corporate social responsibility (CSR). The International Organisation of Employers, to which the Vietnam Chamber of Commerce and Industry (VCCI) belongs, defines CSR as "initiatives by companies voluntarily integrating social and environmental concerns in their business operations and in their interaction with their stakeholders."<sup>3</sup>

Prohibition of discrimination is included in the major international social responsibility benchmarks, including SA8000 and ISO 26000, against which companies measure their performance (see case study 3). Many multinational corporations, including those sourcing in Viet Nam (among them Adidas, Ikea, Intel and Nike)<sup>4</sup> apply codes of conduct and supply-chain management policies that require suppliers to ensure their human resources and business practices are free of discrimination.

#### **DID YOU KNOW?**

Indian society has always been troubled by social divisions along ethnic and social lines, creating disadvantaged groups known as the Scheduled Tribes and Scheduled Castes.

In response, the Confederation of Indian Industry (CII) has formulated a Code of Conduct on Affirmative Action on the Scheduled Castes and Scheduled Tribes, which is a voluntary commitment by Indian companies to help the Government and civil society in the national endeavour to ensure equal opportunity to members of the Scheduled Castes and Scheduled Tribes communities.

This is an example of an "affirmative action" policy by companies to manage the historically disadvantaged position of Scheduled Castes and Scheduled Tribes communities in the labour force.



Though many small and medium-sized enterprises (SMEs) may feel they are not in the same league as these big international buyers, it is a good business decision to eliminate discrimination and ensure equality in the workplace while you are still small. Gaining a reputation as an equal opportunity employer can help build a superior reputation and secure relationships with and orders from big international buyers.

<sup>1</sup>In this publication "good practices" go beyond that minimum protection provided by the law. In demonstrating innovative and replicable approaches and demonstrable sustainability, good practices can lead to actual change that contributes to achieving a set goal. See United Nations resources on gender, *What constitutes a "good practice?"* available at: http://www.un.org/womenwatch/resources/goodpractices/guideline.html [17 July 2012].

<sup>2</sup> "Affirmative action" refers to policies that take account of such factors as race, colour, religion, gender, sexual orientation or national origin to benefit an underrepresented group in areas of employment, education and business. Affirmative action is usually justified on the grounds that it counters the effects of a history of discrimination.

<sup>3</sup>International Organisation of Employers (IOE): Corporate social responsibility – An IOE Approach, position paper, (March 2003).

<sup>4</sup>Nike Inc.: Code of conduct, http://www.nikeresponsibility.com/; Adidas: Adidas group code of conduct, http://www.adidas-group.com; Ikea: IWAY, Our code of conduct, http://www.ikea.com/; Intel: Intel Code of Conduct, http://www.intel.com/ (accessed 30 January 2015).



## Case Study 3

#### Discrimination in SA8000 and ISO26000

**SA8000** is one of the world's best-known voluntary social responsibility benchmarks. Many high-profile brands use it to measure their own performance and to assess the social responsibility of their supply chains. SA8000 is issued by Social Accountability International (SAI), a global multi-stakeholder standards-setting organization. SA8000 requires certified companies to adopt and implement policies and procedures that protect the basic human rights of workers. SA8000 lists the following criteria on discrimination in Section 5.

#### DISCRIMINATION

Criteria:

**5.1** The company shall not engage in or support discrimination in hiring, remuneration, access to training, promotion, termination or retirement based on race, national or social origin, caste, birth, religion, disability, gender, sexual orientation, family responsibilities, marital status, union membership, political opinions, age or any other condition that could give rise to discrimination.

**5.2** The company shall not interfere with the exercise of personnel's rights to observe tenets or practices, or to meet needs relating to race, national or social origin, religion, disability, gender, sexual orientation, family responsibilities, union membership, political opinions or any other condition that could give rise to discrimination.



**5.3** The company shall not allow any behaviour that is threatening, abusive, exploitative or sexually coercive, including gestures, language and physical contact, in the workplace and, where applicable, in residences and other facilities provided by the company for use by personnel.

5.4 The company shall not subject personnel to pregnancy or virginity tests under any circumstances.

#### ISO 26000 – Social Responsibility

The International Organisation for Standardization (ISO) published "ISO 26000: Guidance on social responsibility" in November 2010. Unlike other ISO standards, ISO 26000 is not a certifiable standard, but the guidance document provides practical advice on the governance of social responsibility issues in company practices. ISO 26000 addresses discrimination and vulnerable groups as a human rights issue. The guidance document requires organizations to ensure they do not discriminate against employees, partners, customers, stakeholders, members or anyone else with whom it has any contact or on whom it can have an impact.

Sources: SAI: SA8000: 2008 social responsibility (New York, 2008); and ISO website, http://www.iso.org (3 Sep. 2015).



# 2 Basics of equality management2.1 Where to start?



very company faces different equality-related challenges — there is no one-size-fits-all approach to equality management. Equality measures should always be tailored to the company's specific needs.

In determining whether a company faces equality or discrimination challenges, it is useful to consult the following checklist.<sup>5</sup>

<sup>5</sup> For a more complete checklist, see the Code of practice for employers on promoting equality and preventing discrimination at work in Viet Nam, adapted from the Equal Opportunities Commission (EOC): Equal opportunity essentials kit for SMEs (Hong Kong, China, 2014).



Steps to promote equality at work

## **Tips and tools 4** Checklist: How advanced is your equality management?

Questions about equality management	Yes	No	Not sure
<b>1</b> Do you have an equality policy?			
<b>2</b> Is equality part of all your work practices, from advertising job vacancies and recruitment to job termination?			
<b>3</b> Do you have a procedure for resolving complaints related to discrimination and equality?			
<b>4</b> If you have an equality policy or procedure for resolving equality- related complaints, have you taken action to ensure all staff have read it and know where to obtain a copy if necessary?			
<b>5</b> Have you taken action to ensure all employees understand what constitutes respectful and otherwise acceptable behaviour in the workplace?			
<b>6</b> Have you made it clear to staff that discrimination, harassment, vilification and victimization will not be tolerated, and that any issues or complaints will be handled as fairly as possible without victimization of either the person who instigates the problem or is affected by it?			
<b>7</b> Do you provide all staff with regular information and training about equality?			
<b>8</b> Is a designated person responsible for equality in your workplace?			
<b>9</b> Do staff know who the person responsible for equality is?			

#### CHECKLIST SCORING

Α	9 Affirmatives	You're doing very well. We suggest that you continue the good work by regularly reviewing your equality policies and work practices.
В	6-8 Affirmatives	Your company has made a good start at implementing equality measures. Use the tools in this four-part guide to focus on the areas you have not completed.
С	3–5 Affirmatives	You have some way to go in implementing equality. This four-part guide contains a number of tools to help you.
D	0-3 Affirmatives	Your equality implementation is incomplete. Please read this four-part guide for more information from specialized organizations near you.



## 2.2 Basic steps in equality management



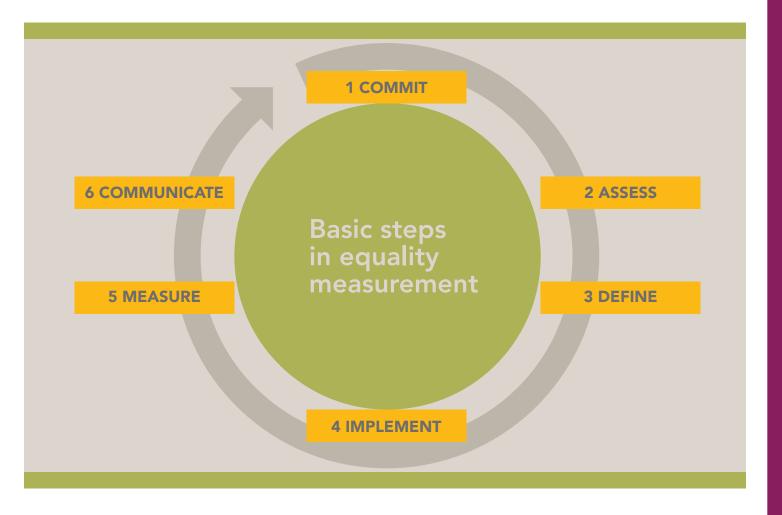
he foregoing checklist provides a rough idea of the status of equality and discrimination in a company, and can be used to begin addressing the challenges. In systematically managing equality in company operations and human resources practices, most companies adopt special management tools such as codes, policies and programmes.

The most common tools adopted at the company level for managing equality in human resources policies and practices include the following:

- Equality policy stating company commitment to ensure equal opportunity and treatment in all human resources practices and to foster a workplace culture free of discrimination and harassment.
- Equality action plan outlining practical steps to realizing the objectives set out in the policy.

 Affirmative action measures providing assistance to specific groups of job applicants or employees to ensure fair, full and equitable access to equal opportunity and treatment for all. The affirmative action measures are part of the equality action plan.





The basic steps in equality management include the following:

**1 Commit.** Leadership commitment to equality in all human resources practices and company operations is the first step. Most companies do this by adopting an equality policy. A policy does not in itself produce changes and equality. Senior managers have to oversee effective implementation and ongoing reinforcement of such policies.

**2** Assess. Review existing human resources policies and practices and current staff composition to identify needs and areas for equality promotion. This should be undertaken in conjunction with the company's business strategy, ensuring that equality promotion and business needs go hand in hand.

**3 Define.** Define goals, strategies and specific programmes to promote and mainstream equality. Most companies do this by adopting an equality action plan and affirmative action measures.



**4 Implement.** Implement strategies and programmes throughout the company by ensuring that staff are aware of the business needs related to the policy, and by ensuring consistency in implementation.

**5 Measure.** Measure and monitor impact and progress toward goals. Implementation may be more difficult than expected, and failure to meet goals requires management to reassess strategies and to rethink how equality policies may be realized.

**6 Communicate.** Communicate progress and challenges. Engage with stakeholders for continuous improvement.<sup>6</sup>

Clear and measurable objectives must be set to promote equality promotion, and then concrete steps must be taken to realize them within a defined timeframe. The best way to proceed is to set priorities and implement these in stages. Think big and start small. Do it step by step rather than trying to achieve everything at once. Keep reviewing your progress, and keep abreast of the latest labour market and legal developments.

Experience from Europe shows that SMEs often choose to begin with ensuring that recruitment practices are transparent and free of discriminatory bias.<sup>7</sup> All companies, regardless of size, find this a relatively easy and concrete first step in implementing equal opportunity and promoting the company as an equal opportunity employer.

The equality issues that need to be addressed change over time. Current priorities will depend on changes in company employee demographics, political or labour market changes or other factors in the economic environment. For this reason, ensuring equality in human resources practices requires commitment to continuous improvement.



<sup>&</sup>lt;sup>6</sup> Adapted from United Nations Global Compact: UN global compact management model (New York, 2010).

<sup>&</sup>lt;sup>7</sup> European Commission: Continuing the diversity journey: Business practices, perspectives and benefits (Luxembourg, 2008).

### Case Study 4

#### **Diversity management in European companies**

In 2005 and 2008 the European Commission undertook mapping sturveys of diversity management practices in European companies. The two surveys were conducted among member companies of the European Business Test Panel (EBTP). The 2008 survey verified the conclusion that, compared to 2005, an increasing proportion of companies recognize the links between diversity and good business performance.

Of the 335 companies participating in the 2008 survey, 56 per cent had established some kind of an equality and diversity policy. Of these policies, 25 per cent covered all six grounds of discrimination prohibited under European law (gender, age, ethnicity and race, disability, religion and belief, and sexual orientation), whereas 64 per cent covered only some grounds, and 12 per cent covered only one ground. The equality and diversity policies most often addressed issues related to staff recruitment, retention and management (93 per cent), organizational culture (75 per cent), and work-life balance (70 per cent). One quarter of the companies with equality and diversity policies had also adopted affirmative action measures, setting targets for the recruitment, training or promotion of staff from under-represented groups.

Almost two-thirds of the surveyed companies recognized that implementation of equality and diversity policies had made a positive impact upon their business. The most common benefits included improved employee motivation and efficiency; access to a new labour pool; company reputation, corporate image and good community relations; recruitment of highquality employees; and opportunities for innovation and creativity. The links between innovation and diversity were recognized by 63 per cent of the companies. Diversity-led innovation had increased significantly more in companies implementing affirmative action measures (83 per cent), compared to companies without such measures (55 per cent). These benefits were equally recognized both in SMEs and in large and very large companies.

Source: European Commission: Diversity management in 2008: Research with the European Business Test Panel (Brussels, 2008).



# Optimized and implementing equality measures

nsuring that all human resources management policies and practices are free of discrimination requires a systematic approach to managing equality in the workplace.An effective company equality action plan will:

Oversee the review and revision of human resources policies;

Train staff responsible for recruitment and human resources management; and

Incorporate equality within the company culture.

The equality action plan is often framed in the light of a policy stating the company's commitment to equality and generally includes a staged approach to equality activities and affirmative action measures. This approach includes:

Assessing the challenges and defining actions needed;

Implementing measures;

- Measuring their impact; and
- Analysing and communicating these findings.

This chapter outlines the main steps in equality management and provides practical guidance to managers in how to implement equality measures at the company level. The following tips and tools provide a summary of the main steps to integrating non-discrimination in human resources practices.



## **Tips and tools 5** Non-discrimination road map

<b>1</b> Identify need for non- discrimination strategy	<ul> <li>Link non-discrimination with business priorities.</li> <li>Obtain senior management's support for initiatives.</li> <li>Identify business benefits from non-discrimination.</li> </ul>
<b>2</b> Prepare baseline information	<ul> <li>Analyse the composition of the workforce.</li> <li>Analyse the composition of the local labour market.</li> <li>Obtain information on legislative requirements.</li> </ul>
<b>3</b> Review and change recruitment policies	<ul> <li>Move to competence-based systems.</li> <li>Ensure recruitment is not based on discriminatory personal features such as sex or ethnic origin.</li> <li>Train managers in non-discriminatory recruitment.</li> </ul>
<b>4</b> Assess payment practices	<ul> <li>Identify potentially discriminatory practices.</li> <li>Audit payment disparities for women and minority groups.</li> </ul>
<b>5</b> Implement an anti- harassment policy	<ul> <li>Define an anti-harassment policy.</li> <li>Communicate the policy to the workforce.</li> <li>Train managers regarding the policy.</li> <li>Support workers who are harassed.</li> </ul>
<b>6</b> Develop family- friendly policies	<ul> <li>Institute maternity-leave policies.</li> <li>Encourage flexible working hours and conditions where appropriate.</li> <li>Consider the possibility of providing crèches or supporting the cost of day care.</li> <li>Consider ways to accommodate breastfeeding mothers.</li> </ul>
<b>7</b> Understand cultural and religious diversity	<ul> <li>Know the cultural context of the society in which you operate.</li> <li>Train and develop managers to understand cultural differences.</li> <li>Adjust workplace practices to facilitate religious cultural practices where possible.</li> </ul>
<b>8</b> Involve under- represented groups in your workforce	<ul> <li>Check your recruitment requirements. Are they fair for everybody?</li> <li>Consider ways of providing training to potential employees to improve their chances of employment.</li> <li>Consider whether you can work with government agencies, workers' organizations and other stakeholders to develop the potential of under-represented groups.</li> </ul>
<b>9</b> Devise a strategy to deal with disability and health issues	<ul> <li>Examine ways in which jobs can be adjusted to accommodate people with disabilities.</li> <li>Adopt a health management system that seeks to rehabilitate or reintegrate employees who have long-term health problems.</li> <li>Develop a policy on HIV/AIDS.</li> </ul>
<b>10</b> Communicate	<ul> <li>Ensure managers and workforce understand the standards of behaviour expected of them and that they are aware of company policies.</li> <li>Inform marginalized communities about your programmes.</li> <li>Accentuate the positive advantages of non-discrimination with all stakeholders.</li> </ul>

Source: Adapted from International Finance Corporation: Good practice note: Non-discrimination and equal opportunity, No. 5 (January 2006).



## **3.1 Commit to equality,** adopt an equality policy



mployers who take equality seriously adopt a formal equality policy, thereby committing to equal opportunity and treatment in their company human resources practices. As with any other major company policy, this should be carefully prepared and approved by the company board. Strong senior management support is essential to successful implementation of the equality policy. After adoption, the policy should be displayed in the workplace and circulated among the employees. Many successful companies also choose to incorporate their commitment to equal employment in their mission and core value statements.

The equality policy should be prepared in consultation with workers organizations or, where these are not present in the company, with representatives of directly concerned employees. The nature of the equality policy and its manner of implementation vary from company to company depending, among other things, on the size and operational requirements of the enterprise. Smaller firms may find a lesser degree of formality appropriate. Common elements appear in all equality policies, however.



# Guidelines for preparing an equality policy

- ✓ Issue the policy in written form.
- Formally state company commitment to equality in all human resources policies and practices.
   Confirm that no discrimination or harassment will be tolerated.
- Compose the statement in clear, readily understandable language. Define the grounds of discrimination covered by the policy. The legal grounds of discrimination should be included at a minimum; add more as they become applicable.
- Publish the policy through such channels as company notice boards, staff newsletters, employee handbooks and e-mail, so that staff is aware the policy is in place.
- List the recruitment and employment decisions to which the equality principle will be applied.
- The company board and senior management should formally state their commitment to the equality policy. Have the policy signed by the board or the chief executive officer (CEO).
- Assign a member of senior management the responsibility for putting the policy into practice and for monitoring progress.
- Appoint an equality coordinator to coordinate implementation of the policy.
- ✓ Train managers, supervisors and the rest of the staff regarding equality.
- Conduct an equality audit to review prevailing company human resources policies and practices and to document current staff demographics (for example sex, age and ethnicity) in different types of job.
- Provide a brief outline of policy objectives and how these are to be implemented. Provide for preparation of an action plan to establish concrete measures and affirmative action to be taken.
- Outline how the policy will be monitored for its effectiveness.
- Include a description of how discrimination-related problems and complaints are to be handled in the workplace. A procedure for handling grievances can be adopted in a separate document.



# Consultation with workers' organizations and employee representatives

The equality policy should be developed in consultation with workers' organizations or, where these are not present in the company, with representatives of directly concerned employees. Consult with both men and women workers in the different areas and levels of the company. Policy objectives can only be achieved if employees accept the policy and support its effective implementation. Consultation with workers should be initiated in the early stages of policy formulation and continued throughout the process.

Consultation does not mean that the employer yields authority over any final decision affecting the efficient operation of the company. It simply means that, before taking such decisions, the employer invites the views of employees, considers them in good faith and incorporates useful insights into the final decision. Consultation can prevent management decisions from unnecessarily offending employee sensitivities. It also helps to explore a variety of efficient and workable paths to reach a management goal.

# Commitment from the board and senior management

The equality policy should be approved by the company board and signed by the CEO. Support from the CEO and senior management is one of the most critical factors for the successful implementation of equality measures. CEOs should lead by example and involve the senior management team in the implementation of fair employment practices. To strengthen the commitment of managers to implementing equality measures, managers should be held personally accountability — for example, in their job descriptions and performance appraisals — for meeting equality objectives.



In many leading companies, managers and supervisors are held accountable for their personal behaviour as well as for meeting fair employment objectives such as developing and mentoring women leaders or employing older workers.<sup>8</sup>

Suggestions on how to develop a company equality policy can be found in a sample developed by the Hong Kong Equal Opportunities Commission (EOC) for SMEs. The Commission encourages companies to adapt the policy to their specific needs, adopt the policy and endorse it with the company seal.

# **Tips and tools 6** Sample equal opportunity policy from Hong Kong, China

### Sample equal opportunity policy

**[company name]** is an equal opportunity employer. This means we make sure that every job applicant and employee has equal employment opportunities. You will not be disadvantaged because of your sex, pregnancy, disability, race, marital status or family status **[ any other characteristics you would like to include]** during your employment or when applying for a job with us. What matters to us is that you are the best person for the job and that you do a good job. At

**[company name]** we believe that everyone has the right to work in an environment free of discrimination, harassment, vilification, and victimization. We will not tolerate such behaviour under any circumstances.

### Discrimination

We will not tolerate direct or indirect discrimination based on sex, pregnancy, disability, race, marital status or family status or **[any other grounds]**.

<sup>8</sup> ILO: As one employer to another... What is all this about EQUALITY? Bureau of Employers' Activities (Geneva, 1996); New Zealand Employers' Federation: A guide for employers on discrimination in employment (Wellington, 1993); EOC: Equal opportunity essentials kit for SMEs (Hong Kong, China, 2014); and TAFEP: Fair employment: Leading fair employment practices handbook (Singapore, 2009).



**Direct discrimination** is when you are treated less favourably because of your sex, disability or other protected characteristic previously mentioned. For example, it would be direct discrimination for a supervisor to refuse you training because you were pregnant.

**Indirect discrimination** is when you are treated the same way as everyone else but you do not or cannot comply with a rule, condition or requirement of employment that applies to everyone because of your sex, pregnancy, disability, marital status or family status, and a higher proportion of people who do not have that characteristic do or can comply with it, and there is no valid reason for the rule or requirement. (For example, a policy of only hiring people who were able to relocate at short notice may disadvantage people whose family responsibilities (e.g. persons with young children) prevent them from speedy relocation.) However, it would not be indirect discrimination if we, as your employer, can give a valid reason for such a requirement.

#### Harassment

We will not tolerate sexual harassment, disability harassment, racial harassment or **[harassment on any other characteristics you would like to include]**. Harassment is behaviour that is not welcome, not asked for and not returned, and which is likely to cause discomfort by humiliating, seriously embarrassing, offending or intimidating someone. All employees are responsible for their own actions and should not engage in potentially offensive behaviour. It is not necessary for the person being harassed to have to tell you that they were humiliated or offended by the behaviour.

#### Vilification

Vilification of **an** employee because of **their** disability is unacceptable in this workplace. Vilification is any activity in public that incites hatred, serious ridicule or contempt of **a** person because of **their** disability. Where such behaviour includes threats of harm or property damage, it may constitute serious vilification, which is a criminal offence.

#### Victimization

We won't disadvantage you for complaining about unlawful conduct in this workplace or for helping someone else to do so. We take reports of discrimination, harassment, vilification and victimization very seriously and will handle such complaints as quickly, confidentially and fairly as possible.



### Who this policy covers

This policy covers management, supervisors, all employees, including those on commission, casual and contract staff. It also covers customers and anyone else to whom we provide goods, services or facilities.

### What this policy covers

This policy covers:

- Advertising for job vacancies;
- Recruitment;
- Training and development opportunities;
- Work allocation;
- Shifts, rosters, hours of work and overtime;
- Salary levels and packages;
- Leave arrangements;
- Pregnancy arrangements and associated leave;
- Performance assessment;
- Disciplinary procedures;
- Restructuring;
- Dismissal, redundancy and termination of employment;
- Provision of goods, services and facilities.

Resolving problems

If you feel you are being unlawfully discriminated against, harassed, vilified or victimized, we would like you to tell us as soon as possible so we can resolve the issue or problem at the earliest opportunity. We have a procedure for handling equal opportunity related problems. We won't victimize you for speaking out and will not allow any employee of this company to do so. Employees found to have engaged in unlawful behaviour may be disciplined and, in serious cases, dismissed.

Date

Signature of business operator / company seal

Source: Adapted from Equal Opportunities Commission (EOC): Equal opportunity essentials kit for SMEs (Hong Kong, China, 2014).



# **3.2 Conduct an equality audit** Review of policies and practices

review of company human resources management policies and practices is the first step for every employer committed to promoting equality. All existing policies, practices and procedures regarding recruitment, remuneration, entitlement to benefits, defining terms and conditions of work, access to vocational training, advancement and promotion, and termination of employment contracts should be reviewed and areas needing change identified. The review should be conducted in consultation with workers' organizations or representatives of directly concerned employees.

# Identifying hidden barriers through workforce assessment

A review of policies and practices accepted at face value will fail to identify all barriers to equal opportunity and treatment in a company's human resources management practices. Many such barriers are hidden, and can be identified only by analysing the actual composition of the workforce. Employers should conduct a workforce assessment, analysing statistical workforce data such as sex, age, origin, ethnicity and disability. This can help to identify policies and practices that, whether intentionally or unintentionally, create invisible or institutional divisions within the workforce.

The manner in which the workforce assessment is conducted, including its degree of formality, will vary with the size of the company or organization. An informal review to assess the distribution and payment of employees may be enough in a small business or unit with a simple structure. A more formal analysis may be required in a larger and more complex organization. Workers' organizations, where they exist, or other employee representatives should always be involved in the planning and execution of such workforce assessments.

# Guidelines for analysing the data from a workforce assessment

Assess staff composition in terms of sex, ethnicity and origin in different types of work in each major job category (managerial, clerical, skilled or unskilled employees), each occupational group (engineering, production) and type or status of employment (undetermined duration or fixed duration contracts, whether full- or part-time).

Look at what kinds of people apply to work in your company, who is invited for an interview and who gets recruited.

Establish pay levels for the various groups of employees.

Compare performance ratings of different employee groups.

Monitor who applies for training opportunities in your company, who is provided with training and in what work areas.

Monitor what kinds of people apply for promotion in your company, and who gets promoted.

✓ Analyse lines of progression, namely the jobs employees pass through as they are promoted within the company. Count how many members of different groups are working at each level of the company to identify possible barriers to employment promotion for men and women, for example. Determine whether some staff members are in positions where they cannot make full use of their skills and talents.

✓ Determine who lodges grievances in your company, and for what reasons.

Determine who tends to be absent or sick and for what reasons.

 $\checkmark$  See who is dismissed and who resigns from the company and for what reasons.



When analysing the data, look at significant differences between groups of workers (women and men, ethnic minority employees, people with disabilities) and identify trends. Where significant differences are found, these should be analysed. The findings of the workforce assessment will provide the basis for defining the activities and affirmative action measures to be taken as part of the company equality action plan.

In most cases, a workforce assessment means collecting such personal information as marital status, ethnicity or age from employees for analytical purposes. Management should explain to employees that data are collected solely for the purposes of identifying areas for improving human resources practices and detecting areas that need equality measures. Employees should be assured that their personal data will be kept confidential. In any case, the provision of personal information should always be voluntary.<sup>9</sup>

# Pay equity audit (objective job evaluation)

Pay equity audits determine whether salary levels for different jobs in the organization have been established at fair and equitable levels. These audits focus on assessing the value of different jobs by comparing their respective working conditions and the knowledge, effort and responsibility needed to perform them.

The following tips and tools section provides an introduction to pay equity, or the principle of "equal pay for work of equal value".

<sup>&</sup>lt;sup>9</sup>ILO: As one employer to another... What is all this about EQUALITY? (Geneva, ACT/EMP, 1996); New Zealand Employers' Federation: A guide for employers on discrimination in employment (Wellington, 1993); and Advisory, Conciliation and Arbitration Service (ACAS): Delivering equality and diversity (London, 2009).



# **Tips and tools 7** How to define the "value" of a job

The principle of "equal pay for work of equal value" was established in the ILO Equal Remuneration Convention, 1950 (No. 100), which Viet Nam ratified in 1997. The Convention requires equal pay not only for workers performing the same job, but also for workers performing different jobs that are of "equal value". The following criteria are often used when comparing the value of different jobs:

• Skill: Knowledge and abilities accumulated through education or work experience.

• **Effort:** Physical or mental effort, or physical, mental or nervous strain connected with performance of the job.

• **Responsibility:** Responsibility required to perform the work, including the nature, scope and complexity of the duties, the extent to which the employer relies on the employee to perform the work, and accountability of employee to employer for resources and for the work of other employees.

• **Conditions of work:** Conditions under which the work is to be performed, including factors such as noise, heat, cold, isolation, physical danger, health hazards or any other conditions produced by the work environment.

At the company level, **a pay equity audit** can help to ensure that remuneration levels for all jobs are determined in a non-discriminatory way. Pay equity audits usually compare pay levels of women and men, but the same method can be used to compare pay levels of local employees and foreign workers, for example, or workers with undetermined duration and fixed duration contracts. Pay equity audits are conducted to assess whether salary levels for different jobs in the organization are fair and equitable. The audits aim to identify undervaluation of certain jobs, most often those traditionally performed by women. In Viet Nam, differences in women's and men's income are closely associated with the gender-based division of work in the labour market and the undervaluation of "women's jobs". Ensuring that all workers are paid in accordance with the value of their work helps to prevent wage disputes in the company.

For guidance in conducting a pay equity audit, see Conducting an equality audit, section 3.2, Booklet 4: Management practices that promote equality.





A planned and structured process free of discriminatory bias should be applied to assessing the comparative value of jobs. Companies generally appoint a committee to plan and conduct the pay equity audit. The committee should include both managers and employees or workers' organization representatives. An audit commonly follows these steps:

**Step 1** Identify the jobs to be compared. For example, to detect gender pay gaps, select women-dominated jobs for comparison with male-dominated jobs.

**Step 2** Choose a job evaluation method.

**Step 3** Develop tools for data collection and gather information regarding the jobs to be compared.

**Step 4** Analyse the questionnaire results.

**Step 5** Determine the value of jobs by assessing the associated skills, effort needed, degree of responsibility and working conditions.

**Step 6** Estimate wage gaps between jobs of equal value.

**Step 7** Adjust pay to achieve equitable remuneration.



## Guidelines for conducting a pay equity audit

Ensure that managers and employees are equally represented on the pay equity audit committee.
A minimum of one representative from each job audited should be invited to join the committee.

Ensure equal committee representation of women and men. If the comparison concerns pay differences between urban and rural, or resident and migrant employees, both groups should be equally represented.

✓ Give the committee proper training in pay equity before starting the audit process.

Allow employees the opportunity to contribute their comments and other inputs at every stage of the audit process.

Keep the criteria for assessing the value of jobs free of bias. Ensure that different types of skill, levels of effort needed, degree of responsibility and working conditions are all considered and valued in an unbiased way.

✓ Weigh different criteria based on their relative importance.

✓ Take both the basic salary and entitlements, plus other benefits such as seniority bonus and performance pay into account when comparing the pay levels for different jobs.<sup>10</sup>

Where the pay differs for two jobs of equal value for two employees with the same seniority and same performance ratings, a pay gap has been identified. See tips and tools 8 for a sample job comparison worksheet.

<sup>10</sup> M.T. Chicha: Promoting equity: Gender neutral job evaluations for equal pay – A step-by-step guide (Geneva, 2008).



# Tips and Tools 8

Sample job comparison sheet

Instructions for the sample job comparison sheet: Score Job A and Job B on a scale of 0–5 points for each criterion. (0 means not important, and 5 means very important.)

CRITERIA	JOB A	JOB B
1. Skill		
1.1 Knowledge and education level		
1.2 Experience		
1.3 Initiative and ingenuity		
2. Effort		
2.1 Physical demand		
2.2 Mental or visual demand		
3. Responsibility		
3.1 Responsibility for equipment or process		
3.2 Responsibility for material or product		
3.3 Responsibility for safety of others		
3.4 Responsibility for work of others		
4. Working Conditions		
4.1 Working conditions and hazards		
4.2 Complexity of duties		
4.3 Importance of not making errors		
4.4 Contact with others		
4.4 Ability to work with confidential data		

### **Total points**

Source: United Electrical, Radio and Machine Workers of America: UE Information for workers: Bargaining for pay equity. Available at http://www.ueunion.org/stwd\_fairpay.html.



# **3.3 Define an equality action plan**

company equality policy must be supported by concrete measures to review and then change policies and practices. To ensure successful implementation of such measures, it is best to formulate an action plan clearly defining the objectives, sequence of steps and timeline for implementation.

Company equality objectives should be defined on the basis of the needs and challenges identified in the equality audit. Workers' organizations, where they exist, or representatives of directly concerned employees should be consulted in setting objectives and selecting the necessary means to achieve them. Proactive measures such as special affirmative action are often needed to address the challenges identified in the workforce assessment.<sup>11</sup>

### **Equality action plan**

The action plan should accomplish the following:

- Describe the immediate objectives in explicit terms;
- Define the concrete steps and actions needed to achieve the objectives;
- Assign clear responsibility for achieving the objectives;
- Set a realistic target date; and
- Establish a procedure for evaluating action taken.

<sup>&</sup>lt;sup>11</sup> ILO: See New Zealand Employers' Federation: A guide for employers on discrimination in employment (Wellington, 1993); and ACAS: Delivering equality and diversity (London, 2009).



Measures within the action plan may include the following objectives:

Objective 1 Ensur	bjective 1 Ensure that all recruitment policies and practices are free of discrimination.					
Steps	Review all recruitment policies and procedures (including job application					
	forms and other recruitment documents) and remove any discriminatory					
	elements. Train all staff involved in recruitment in non-discriminatory					
	shortlisting and interviewing practices. Write objective job descriptions and					
	competency statements for all jobs.					
Responsibility	Senior manager tasked with ensuring equality. The human resources					
	department conducts the review and coordinates training activities.					
Target date	Within three months.					
Evaluation	The human resources department monitors implementation of the activities					
	and evaluates the impact on actual recruitment outcomes.					

nate all forms of harassment in the workplace.
Develop, publicize and put into practice a company policy on harassment,
and establish a procedure for handling related complaints. Train all staff and
managers in the policy and use of the complaints procedure.
Senior manager tasked with ensuring equality and the human resources
department.
Within six months.
The human resources department monitors the use of the complaints
procedure.
r





Photo credit: worker photo from Ernst and Young.

## Affirmative action measures

Affirmative (positive) action measures are special temporary measures that aim to redress the effects of past or continuing discrimination to establish equal opportunity and treatment between different groups of employees. Such measures target a particular group of employees or job applicants (for example women or men, workers with disabilities, ethnic workers or older workers) that are under-represented in the company or in certain kinds of positions. Affirmative action measures are important in fighting horizontal and vertical job segregation based on biased attitudes or stereotyped ideas about what kind of work is suitable for particular types of people.<sup>12</sup>

In its most straightforward form, affirmative action is often a legal requirement that a defined proportion (as a minimum) of the workforce is reserved for workers of a traditionally disadvantaged group, perhaps persons with disabilities or ethnic/religious minorities.

<sup>&</sup>lt;sup>12</sup> ILO: Equality and non-discrimination at work in China: Training Manual (Beijing and Bangkok, 2010); New Zealand Employers' Federation: A guide for employers on Discrimination in Employment (Wellington, 1993); and ACAS: Delivering equality and diversity (London, 2009).



# **Case Study 5**

### Implementing an equality action plan in Viet Nam

In Hanoi, Esoftflow, an image processing company, has been implementing an equality action plan since its inception. Recognizing that their sector is traditionally male dominated, the company set a target that at least 35 per cent of its workforce should consist of women. Taking diversity further, Esoftflow attempts to compose 12 per cent of its workforce of people with disabilities (PWD). Every year, an internal audit is conducted to see if the targets are met and if not, to assess the reasons the targets were missed. In the most recent audit report from 2014, the company almost reached the target for PWDs (11 per cent) but came short of the target on gender (30 per cent). Thanks to its meticulous annual records, Esoftflow is able to make continuous improvements to its recruitment system.

In Long An province, Jia Hsin, a footwear company, creates an equality action plan every year. For 2015, it plans to introduce female workers into a department currently staffed exclusively by men. In order to implement this plan, the company conducted a review of the work of the department to assess its pros and cons. Management subsequently modified some of the positions to make them more appealing. The female workers and the existing workers will benefit from the improved working conditions.

Source: Interview with Ms Nguyen Thuy Ha, Human Resources and Office Manager of Esoftflow; and Interview with Ms Nguyen Lam Hoang Ai, Senior Manager of Jia Hsin Viet Nam, 1 Apr. 2015.

It is a good practice for managers attuned to the benefits of a diversified workforce to consider similar measures to achieve a balance within the workforce, one that more accurately represents traditionally disadvantaged groups within society (for example women, ethnic minorities, younger or older people).

Companies can use equality audits to determine what kind of positive measures are needed to balance unequal representation of different groups of employees in different types of jobs.



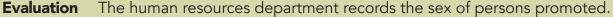
Examples of affirmative action measures include the following:

- Special recruitment programmes;
- Special career development courses;
- Upward mobility programmes; and
- Setting specific goals, targets or quotas for disadvantaged groups.

The affirmative action measures should be included in the company equality action plan, and clear objectives, steps, spheres and degrees of responsibility, timeframes, and methods for monitoring effectiveness should be defined for each measure. An example is provided below:

Objective 3 In	ncrease recruitment of ethnic minority applicants gradually by 10 per cent.				
<b>Steps</b> Include a special notice in job advertisements to encourage ethnic minorities to					
	apply. Place the advertisements in ethnic minority newspapers and community				
	centres. Train all staff involved in recruitment in equality.				
Responsibility	Senior manager tasked with ensuring equality and the human resources				
	department.				
Target date	Within 12 months.				
Evaluation	The human resources department records the ethnicity of new recruits.				

Objective 4 In	crease to 30 per cent the proportion of women in senior management positions.				
<b>Steps</b> Advertise all opportunities for training and promotion openly, and encourag					
	women to apply. Ensure that training courses are organized so that women with				
	family responsibilities can also attend. Provide individual career counselling to				
	able women with leadership potential.				
Responsibility	Senior manager tasked with ensuring equality and the human resources department.				
Target date	Within three years.				





# **3.4 Implement the equality** policy and action plan Internal communication

he equality policy and action plan are only effective if all managers and staff are fully aware of them. They should understand the issues. They should recognize what their rights and responsibilities are, and what represents acceptable and unacceptable behaviour or practices in the workplace. Relevant information should be provided to all new employees, and regular policy implementation updates should be provided to all staff. Recommended channels for effective internal communication of equality practices include the following:

- CEO speeches and messages;
- Employee handbooks, human resources circulars, staff newsletters and company social media;
- Information flyers, handouts, brochures and other public relations materials announcing the equality policy and showcasing success stories;
- Posters highlighting equality of opportunity and treatment as the core value of the company; and
- Policy briefing sessions during staff meetings, company events and training workshops.

Employers should ensure that employees can communicate their views, ideas and concerns on the implementation of equality measures. This two-way communication can be organized through formal mechanisms (suggestion boxes) or informal discussions. Where appropriate, employee communications should be kept confidential. Implementation of company equality measures should be conducted in consultation with workers' organizations or, where these organizations are not present in the company, with representatives of directly concerned employees.

# **Equality training**

The success of any equality policy depends greatly on effective equality training for managers, supervisors and staff involved in making recruitment and employment decisions. Discrimination can be eliminated in company practices only if managers know how to ensure equality in every decision related to human resources. Training of managers should focus on providing practical skills and tools for managing a fair recruitment process and a diverse work team. As part of this, managers should be encouraged to develop team potential by fully utilizing the differences contributed by each staff member. Equality training for all employees can also help change the way staff and managers perceive differences and promote the idea of diversity as a source of corporate strength.<sup>13</sup>

## Appointing an equality coordinator

Employers should appoint someone to coordinate implementation of the equality policy and action plan. They can either establish a full-time equality coordinator post or assign responsibility for these duties to an existing employee. The equality coordinator is usually someone in the human resources department.

The equality coordinator should report directly to the senior manager responsible for equality. The coordinator's main task is to ensure that the steps set out to realize policy and action plan objectives are implemented within the agreed timeframe.

The coordinator should engage managers and employees at all levels in facilitating change within the company, raising awareness on the importance of the issue. He or she should also advise and assist line managers in ensuring that equal human resources practices are applied at all levels. In addition, the coordinator should be the first contact point for employees who feel they have been discriminated against or harassed in the workplace.

<sup>&</sup>lt;sup>13</sup> See TAFEP: Fair employment: Leading fair employment practices handbook (Singapore, 2009); and EOC: Equal opportunity essentials kit for SMEs (Hong Kong, China, 2014).



# **Tips and Tools 9** Remember the role of middle managers and supervisors

To establish fair employment practices, senior management needs to ensure the support of middle managers and supervisors. These employees can either serve as catalysts for change in the adoption of fair employment practices, or they may hinder the organization's commitment to equal of opportunity and treatment.

Organizations must ensure that middle managers understand the rationale behind merit-based employment practices and affirmative action, as well as their own roles in implementing these practices. In addition, middle managers and supervisors need to understand how fair employment practices can improve employee performance. They are positioned to understand employee concerns and to communicate these to senior management. Middle managers should also play a vital role in explaining fair employment initiatives implemented by the organization.

Organizations can involve middle managers in the implementation of fair employment practices in a number of ways, including the following:

- Communicate to middle managers the nature and benefits of fair employment practices;
- Help them understand their own roles in the implementation of such practices;
- Provide the necessary expertise and competency through training opportunities in such areas as how to hire on merit;
- Provide the appropriate tools, including recruitment guides, for fair hiring and other human resources policies;
- Raise their awareness of their own biases and stereotypes;
- Encourage them to remain receptive to new ideas and ways of doing things; and
- Hold them accountable and reward them for successful implementation of fair employment measures in such ways as sharing and showcasing successful examples with employees.

Source: TAFEP: Fair employment: Leading fair employment practices handbook (Singapore, 2009).



# 3.5 Monitor the equality policy and action plan Policy review

he equality policy should be monitored regularly, preferably annually, to ensure it works in practice and that actions taken to promote equality are successful. Soliciting employee feedback is a crucial element of this process.

How formal a review is needed varies with the size of the organization. In a small company, an informal review may be enough. In a larger and more complex organization, a more formal analysis may be required.

## Data collection and records

The methodology of data collection for the workforce assessment prior to the design of the action plan can also be applied for monitoring purposes.

See Conduct an equality audit, section 3.2, above.

Employers should keep records on all employees and employment decisions. Well-maintained, up-to-date records include useful information for monitoring the equality policy and action plan, while eliminating the need to collect data every time the periodic review comes due. The provision of personal information must always be voluntary, and employers should make sure that employees and job applicants understand the purpose for collecting such data and the importance of monitoring. Personal data collected from employees and job applicants should be kept confidential.<sup>15</sup>

<sup>15</sup> See New Zealand Employers' Federation: A guide for employers on discrimination in employment (Wellington, 1993); ACAS: Delivering equality and diversity (London, 2009); EOC: Code of practice on the Family Status Discrimination Ordinance (Hong Kong, China, undated).



### Data analysis and outcomes

Data analysis should focus on identifying the impact of equality measures and affirmative action, reviewing changes in staff composition in different jobs and at different levels. Management can use the same methodology that was applied for the workforce assessment.

See Conduct an equality audit, section 3.2, above.

• If the workforce assessment shows clear results (that is, the disappearance or reduction of disparities), the equality policy and action plan have proven successful. The action plan should now be reassessed, and unnecessary measures discontinued.

If no impact can be identified, the equality policy and action plan are proving ineffective.
 Employers and workers should then collaborate in the design of new, more effective measures to promote equality.

• Monitoring results should also be used to identify new areas for equality promotion. Clear objectives, steps, responsibilities, timeframes and monitoring arrangements should be defined for these measures, and incorporated into the equality action plan.

### **Continuous improvement**

The monitoring results and outcomes should be used to formulate the next round of equality measures. Keeping the company free of discrimination requires continuous promotion of equality. Without proper attention, previously eradicated discriminatory practices may reappear. For this reason, true commitment to equality requires commitment to a continuing cycle of improvement.

See Basics of equality management, section 2.2, above.



### **Communicate your progress**

It is advantageous to keep stakeholders and the general public informed about the company's equality practices and achievements. Communicating commitment to equality strengthens the company brand image, while attracting both new talent and new customers to the company.

# **Tips and tools 10** Check how well your company is doing in equality promotion

Answer the following questions, then refer to the instructions at the end of the checklist to tabulate your score.

Staff composition and workplace relations	YES	NO	NOT SURE	
<ol> <li>My company has a diverse workforce including women and men belonging to different ethnic, religious and/or social groups.</li> <li>My company employs workers with disabilities or health conditions.</li> <li>In my company, all workers feel they are treated fairly and equally, without distinctions based on their sex, race or ethnicity, colour, religious belief or creed, social origin or birth, language, national origin, political opinion, disability, HIV status, membership in a trade union or participation in union activities.</li> </ol>				
<ul> <li>4. In my company, women and men of different ethnicities and nationalities are equally represented in different types of jobs and occupational categories.</li> <li>5. In my company, we have both male and female bosses and supervisors.</li> </ul>				
Recruitment	YES	NO	NOT SURE	
<b>6.</b> My company's job advertisements clearly state the selection criteria related to qualification, skills, knowledge and experience needed for the job, and do not mention any personal characteristics like sex or origin that are not relevant for the job.				



<b>7.</b> In my company, shortlisting and selection of candidates is done solely on the basis of objective selection criteria related to qualifications, skills, knowledge and experience required for the job.		
<b>8.</b> During a job interview my staff does not ask job applicants questions relating to childbearing, family responsibilities, marital status or any other personal issue unrelated to the work.		
<b>9.</b> My company does not use pregnancy testing or HIV testing as a condition for recruitment, except when hiring for jobs where tests are required by law.		
<b>10.</b> Employment contracts used by my company do not include clauses restricting employees' right to get married or become pregnant.		
<b>11.</b> All my managers and staff involved in the recruitment processes are trained in merit-based and non-discriminatory selection methods.		
<b>12.</b> My company implements specific recruitment programmes to promote workforce diversity and hire people from currently under-represented groups.		

Pay and benefits	YES	NO	NOT SURE
<b>13.</b> In my company, women and men workers from all different social groups receive equal pay for work of equal value.			
<b>14.</b> In my company, all workers have access to salary increments, benefits, facilities and services (including housing and transport allowances and child benefits), without any distinction on the grounds of sex, race or ethnicity, colour, religious belief or creed, social origin or birth, language, national origin, political opinion, disability, HIV status, membership in a trade union or participation in union activities.			
<b>15.</b> In my company, the performance appraisal systems used to define salary increments for good individual performance are objective, unbiased and applied in a non-discriminatory way.			
<b>16.</b> My company recognizes accumulation of seniority during women workers' maternity leave and does not reduce their wages or seniority upon their return to work.			

Term and conditions of work	YES	NO	NOT SURE	
<b>17.</b> In my company, the assignment of duties and allocation of hours of work (including overtime) is done in an equal and fair manner without discrimination on any ground.				
<b>18.</b> My company provides safety equipment for all workers without discrimination.				



Training, advancement and promotion	YES	NO	NOT SURE	
<ul> <li>19. In my company, all categories of workers have access to training and career development based on their personal abilities and motivation, without any discrimination.</li> <li>20. In my company all promotion opportunities are widely advertised throughout the organization and selection is based on abilities, current job performance and aspirations of the employee.</li> <li>21. My company provides special training and development programmes targeting women and other groups of employees that are under-represented in higher levels of personnel.</li> </ul>				
Termination of employment	YES	NO	NOT SURE	
<ul> <li>22. In my company, dismissals are always fair, reasonable and based on documented poor performance or misconduct.</li> <li>23. In my company, renewal of fixed duration contract is never rejected for reasons related to pregnancy, maternity leave and temporary absence from work because of illness or injury, union membership or participation in union activities or any other ground of prohibited discrimination.</li> <li>24. Retrenchments are always conducted in a non-discriminatory manner in my company without any disparate or unjustifiable impacts on specific groups of employees (for example women or ethnic minorities).</li> <li>25. In my company women are allowed to choose whether to retire early or at the same age as men.</li> </ul>				
Harassment	YES	NO	NOT SURE	
<ul> <li>26. In my company, relations between different groups of workers are good and everybody is always treated with respect.</li> <li>27. My company takes active measures to ensure that the working environment is free of harassment and bullying.</li> <li>28. My company takes active measures to ensure that the working environment is free of sexual harassment.</li> </ul>				
Maternity protection	YES	NO	NOT SURE	
<b>29.</b> In my company special consideration is given to women in their last months of pregnancy and to nursing mothers in terms of the suitability of their job, workload and working conditions.				



<b>30.</b> My company allows pregnant women to take (paid or non-paid) leave for prenatal check-ups.			
<ul> <li>31. In my company all women workers having a minimum of one year of uninterrupted service in the enterprise, including those on successive fixed duration contracts, are provided with paid maternity leave and medical benefits.</li> <li>32. In my company, pregnant workers are provided with maternity benefits according to Vietnamese Law.</li> <li>33. My company provides nursing mothers with breastfeeding breaks</li> </ul>			
and facilities.			
Work-family balance	YES	NO	NOT SURE
<ul> <li>34. My company makes it possible for both men and women workers to balance their work and family life (for example flexible work arrangements or family care leave).</li> <li>35. My company has established a crèche (day-care centre) for employees' children in accordance with the Labour Code, or pays workers' costs of external day care based on actual receipts.</li> </ul>			
Reasonable accommodation	YES	NO	NOT SURE
<ul> <li>36. All relevant workspaces in my company are made accessible (with features such as ramps and elevators) for workers using wheelchairs or other mobility aids.</li> <li>37. In my company, workers with disabilities are provided with special work tools and equipment to accommodate their special needs.</li> <li>38. My company makes an effort to accommodate employees' reasonable needs and requests such as specific dietary restrictions, work time and leave arrangements related to religious or ethnic customs or other personal reasons.</li> </ul>			
<ul> <li>such as ramps and elevators) for workers using wheelchairs or other mobility aids.</li> <li>37. In my company, workers with disabilities are provided with special work tools and equipment to accommodate their special needs.</li> <li>38. My company makes an effort to accommodate employees' reasonable needs and requests such as specific dietary restrictions, work time and leave</li> </ul>	YES	NO	NOT SURE



Management of equality issues in the company	YES	NO	NOT SURE	
<ul> <li>41. The leadership of my company recognizes fairness and non-discrimination as key values in the company management style.</li> <li>42. My company has clear and explicit policy, rules and regulations to promote equality and prohibit discrimination.</li> <li>43. My company has clear and explicit policy, rules and regulations to prohibit (sexual) harassment and bullying.</li> <li>44. My company has clear and explicit policy, rules and regulations on maternity protection, paternity leave and work-life balance</li> <li>45. My company has identified payment disparities between men and women, and is taking action to close the pay gaps.</li> <li>46. My company has conducted an equality audit to assess and monitor the equality situation in the company.</li> <li>47. My company has nominated a manager as a focal point responsible for equality issues.</li> <li>48. If any employment agency is used to recruit workers, my company always requires the agency to comply with our company equality policy.</li> </ul>				
Workplace cooperation and social dialogue	YES	NO	NOT SURE	
<b>49.</b> In my company, policies, rules and regulations (including the equality				

<ul> <li>49. In my company, policies, rules and regulations (including the equality policy) are prepared in full consultation with workers organizations or, where these organizations are not present in the company, with representatives of directly concerned employees.</li> <li>50. In my company, employees have successfully negotiated collective agreements with provisions on equality, maternity protection, flexible work, etc.</li> </ul>				
<b>51.</b> My company actively and regularly pursues workplace cooperation with all groups of workers (women, men, ethnic minority workers and workers with disability or health condition) through dialogue with workers' organizations, where they are present, elected workers' representatives and representatives of the respective groups or (in small companies) by communicating with workers directly.				
<b>52.</b> My company has a suggestion box which any employee can use to voice concerns or interests.				
Awareness raising and equality training	YES	NO	NOT SURE	
<b>53.</b> In my company all staff are aware of company policies, rules and/or regulations				

on discrimination, harassment, maternity protection and work-life balance.



<ul> <li>54. All staff in my company understand what acceptable and respectful behaviour in the workplace is and is not.</li> <li>55. All managers have been trained in and understand their role in implementing the company equality and non-discrimination policy.</li> <li>56. All staff in my company have been trained in equality and work-life balance.</li> <li>57. All staff in my company know who the equality officer is and how to contact her/him.</li> </ul>				
Complaints mechanisms	YES	NO	NOT SURE	
<b>58.</b> My company has a procedure to deal with complaints regarding unacceptable behaviour such as harassment, unequal treatment or other discriminatory practices.				

#### Scoring

The total score for the checklist is 80 points: For questions 1-40, each 'yes' answer gives you one point. For questions 41-60, each 'yes' answer gives you two points.

#### Comments on your checklist scores

**Points** 

- **0-10** Your company has some understanding of equality principles but lacks full awareness on discrimination at work. Read the Code of Practice and related four-booklet guide to get more information on how to ensure equal opportunity and treatment and elimination of discriminatory practices in your company.
- **11-30** Your company is starting to make progress in implementing equality, but you still have some way to go. Review the Code of Practice and related four-booklet guide to get ideas on how to strengthen equality implementation in your company.
- **31-50** Progress has been made in your company in understanding and addressing workplace discrimination and promoting equality at work. Your company may be ready to adopt and implement a company equality policy.
- **51-70** Your company has made a good start at implementing equality measures. Use the Code of Practice and related four-booklet guide to check whether you are on the right track and learn how to deal with issues that are not yet addressed.
- **71-80** Your company is doing very well! We suggest that you continue the good work by regularly reviewing your company equality policies and work practices.



# 4. Dealing with discriminationrelated complaints

mployers should establish a procedure for dealing with employee grievances and complaints of discrimination. An effective internal procedure for handling grievances allows for swift and flexible handling of complaints, and can play an important part in cultivating good management-worker relations. Discrimination-related problems are best solved through practical amendments to policies or practices at the workplace level. Disregarding employee complaints until they are taken to court or the Arbitration Council is risky, since letting the problem go public is likely to create bad publicity for the company.

# Guidelines for developing a grievance procedure

Prepare the grievance procedure in written form. It can be prepared separately or as part of the equality policy.

State the company's commitment to resolving any discrimination-related grievance in a fair, confidential, efficient and thorough manner.

Commit to treating all grievances seriously, and to conducting proper investigations in each case.

Ensure the confidentiality of the procedure.

✓ Guarantee that both complainant and respondent will be fairly treated. To avoid misunderstandings, both sides should be allowed to clarify and explain their position.

Prohibit victimization and penalizing of the employee bringing the grievance.

Define the steps for bringing a complaint regarding discrimination. These should be simple and accessible to all employees.

The complainant should be able, in addressing a given issue, to choose between an informal



procedure and a formal company investigation. It is a good practice to define clear procedures for both approaches.

✓ Define the timeframe for considering the case and providing a resolution.

✓ Provide for resolving the matter at the lowest possible level of the organization.

Provide for an avenue to raise the grievance to the next level of management if the employee is not satisfied with the settlement.

State that both sides of the dispute should act in good faith and collaborate in reaching a settlement.

The procedure should be presented and explained to all employees, and line managers should be trained in applying it. Employers should also ensure that line managers and supervisors understand both the importance of the grievance process and their personal role in maintaining harmony among all employees in the workplace.<sup>16</sup>

The senior manager responsible for equality should be made accountable for ensuring the established procedure is followed. The equality coordinator should monitor its use, and take note of related outcomes.

Tips and tools 11 provides a sample to guide SMEs in handling equality-related problems and grievances developed by the EOC. The Commission encourages companies to adapt the procedure to their specific company needs, adopt it and endorse it with the company seal.

<sup>16</sup> See TAFEP: Tripartite guidelines on fair employment practices (Singapore, 2006); EOC: Equal opportunity essentials kit for SMEs (Hong Kong, China, 2014); and EOC: "Sexual harassment in the workplace", in *Good management practice series* (Hong Kong, China, undated).



# **Tips and tools 11** Sample procedures for handling equalityrelated grievances: Hong Kong, China

### Sample procedure for handling equality-related grievances

This procedure explains what to do if you have an equality-related issue.

At **[company name]** we understand that it may be hard for you to work to your full capacity if you are being treated unfairly or harassed at work. That is why we support equal opportunity in this workplace. You can obtain a copy of our equality policy from **[say where]**.

**[Add name of person responsible for equality]** is responsible for making sure this procedure is followed and reviewed as necessary. If you bring a problem to us it will be handled confidentially, impartially and speedily.

### What to do if you have a problem

We have outlined the procedure for handling problems in steps. Not all of these may apply to you, or you may follow them in a different order than shown here. You can seek help from the EOC at any time, though we recommend that you try to resolve the issue at work first, if possible.

### Step 1: Talk to the person/people involved

If you can, it's best to try and resolve issues yourself and to do so as soon as possible after the incident. We understand that you may not always feel comfortable doing so, particularly if you have a problem with a supervisor.

#### Step 2: Talk to the person responsible for equality

If you would like to talk over an issue or find out what your rights are, make time to talk to our company's equality representative **[insert name and contact details]**. They will meet with you as soon as possible. In general they will not discuss your problem with anyone else without your permission. The only exception to this is if you tell them something that may affect someone's safety.

Depending on what you decide and after taking details from you, the equality representative will approach the other person(s) involved in the issue as soon as possible (and preferably within two workdays of meeting with you) and obtain their side of the story.



We strongly encourage timely complaint resolution. Within **[time frame]** after speaking to the other person(s), and **[time frame]** from the date you first approached them, the equality representative will speak to witnesses if they need further information. Witnesses may include people who didn't actually see what happened, but who observed your reaction or other related behaviour.

The equality representative will then decide if they have enough information to know whether your allegation happened (using the standard of proof that it is more likely than not to have happened). They will also work out whether disciplinary action is required.

Where allegations are proved, the equality representative (or your manager) will resolve the problem by: • Bringing everyone together for a meeting to reach an agreement/resolve issues if the allegation is not of a serious nature.

• Taking appropriate disciplinary action (such as requiring an apology, counselling, an official warning, transfer, demotion, loss of promotion rights for a set period) against the person(s) responsible if the allegation is serious.

They may also arrange training on equality issues for all staff to ensure that everyone knows what is and isn't acceptable workplace behaviour.

### Step 3: Contact the Labour Department hotline, workers' organizations or a legal aid centre

If you are unsatisfied with the decision reached under this procedure, or you do not feel comfortable bringing it to our attention, you can contact the Labour Department hotline, workers' organisations or a legal aid centre to get further advice.

### How will our company handle your problem?

We will handle your problem:

• **Confidentially** – Only those directly involved in your issue or complaint (including anyone helping to sort it out) will have access to information about it. Information about the problem will only go on an employee's file if they are disciplined in relation to it.

• **Impartially** – Everyone involved in the issue will get the chance to tell their side of the story, and will be treated as fairly as possible. The person handling the issue or complaint will not make a decision or take any action until all relevant information has been gathered.

• **Speedily** – We will handle all issues or complaints as quickly as possible. Where possible, we will try to resolve all issues within **[time limit]**.



We will not tolerate **Victimization** – Less favourable treatment or disadvantage of anyone involved in an issue or complaint being handled under this procedure will be disciplined. Malicious use of this procedure (e.g. to lie about someone) will also be disciplined. We will not take any action without proof. We will investigate all issues before making a decision and/or taking action. We will only take action if we believe that it is more likely than not that the allegations happened.

\_ Date

Signature of business operator / company chop

Source: Adapted from EOC: Equal opportunity essentials kit for SMEs (Hong Kong, China, 2014).





# 5. Additional resources5.1 Case Studies

## **Case Study 6**

### Malaysian employers take action against sexual harassment

In Malaysia, sexual harassment was not prohibited in labour legislation until January 2012. However, the Penal Code (Act 574) made specific provisions for sexual harassment offences, and protection against sexual harassment was well established in case law. Furthermore, in 1999 the Ministry of Human Resources established a code of practice on the prevention and eradication of sexual harassment in the workplace. The Malaysian Employers Federation (MEF) made a significant contribution to its formulation.

Intended for implementation on a voluntary basis, the code serves as a guideline for employers in establishing an internal mechanism to handle problems of sexual harassment in the workplace. The code encourages employers to set up an in-house mechanism reinforced by a policy statement prohibiting sexual harassment in the organization. The code also urges organizations to adopt a clear definition of sexual harassment, a complaint/grievance procedure, disciplinary rules and penalties against the harasser and against persons making false accusations, and protective and remedial measures for victims. It also encourages implementation of promotional and educational programmes to explain company policy regarding sexual harassment and to raise awareness of sexual harassment and its adverse consequences among employees, supervisors and managers.

The MEF encourages employers to accept and implement the code with a view to preventing and eradicating sexual harassment in the workplace. It keeps its members current on the latest developments regarding sexual harassment. A training programme entitled "Dealing with



sexual harassment at the workplace" is readily available to MEF members, and its industrial relations experts provide advice on how to deal with issues pertaining to sexual harassment in the workplace. The MEF also participates in dialogue with government ministries on issues of sexual harassment in the workplace.

In January 2012, a definition of sexual harassment was included in the Malaysian Employment Act. The amended Employment Act also prescribes a procedure for inquiring into complaints of sexual harassment. The employer is to make primary inquiries into complaints of sexual harassment. Where necessary, a complaint may also be referred to the Director General of Labour.

Sources: ILO: Employers' organizations taking the lead on gender equality: Case studies from ten countries, Bureau of Employers Activities, ACT/EMP No.43 (Geneva, 2005); Government of Malaysia Employment (Amendment) Act 2012.

# Case Study 7

### Female leadership and company profitability

Various studies reveal a significant positive correlation between company performance, profitability and gender diversity in company senior management. The studies show that companies can achieve a competitive advantage over their peers by identifying and eliminating obstacles to women's advancement to top management.

A study from Singapore of 677 companies listed on the stock market found positive relations between the ratio of women in the boardroom and the firms' return on assets (ROA) and return on equity (ROE). The appointment of a new female director to the board also yield similarly positive results. Breaking this figure down, however, shows the benefits of increasing the number of women on the board is relative to the type of company ownership. For firms with highly concentrated ownership, the proportion of female board members is positively associated with subsequent operating performance (ROA and ROE) but has no relation with stock market returns. By contrast, for firms whose ownership is diverse (top five shareholders own less than 50 per cent), the female/director ratio actually has no relation with operating performance but is positively associated with stock market returns. Considering the effect of board diversity on corporate governance, using the Governance and Transparency Index



(GTI), the study found that remuneration matters, transparency and investor relations, and total scores are significantly higher in firms with above average female board representation than those with below average female board representation. In short, more women on the board improves corporate governance.

Separately, a study from the Harvard Business School on the market in the Republic of Korea found that a 10 per cent nominal increase in the share of female managers (at the level of the then-prevailing glass ceiling) was associated with a 1 per cent nominal increase in ROA, even after accounting for other variables. Firms, both foreign and domestic, that do more to hire and promote women to positions of managerial responsibility will see higher levels of profitability. Moreover, this research found that domestic firms, because of their cultural aversion to hiring women to senior managerial positions, are suffering a disadvantage compare to their foreign competitions which are more open to hiring based on talent.

Sources: Centre for Governance, Institutions and Organisations (CGIO): Singapore Board Diversity Report 2013 - Time for Women to Rise (Singapore, 2013); Siegel, Pyun and Cheon: Multinational Firms, Labor Market Discrimination, and the Capture of Competitive Advantage by Exploiting the Social Divide (Harvard, 2010); and United Nations Educational, Scientific and Cultural Organization: Gender, Jobs and Education Prospects and Realities in the Asia-Pacific (Bangkok, 2013).

### **Case Study 8**

### What is the business case for hiring people with disabilities?

In 2007, the ILO developed EmployAbility: A resource guide on disability for employers in Asia and the Pacific as a response to the request of employers who need information to take advantage of this often untapped human resource. The guide outlined the following reasons why hiring workers with disabilities can positively impact a company's bottom line:

• People with disabilities make good, dependable employees. Employers of disabled workers consistently report that, as a group, people with disabilities perform on par or better than their non-disabled peers on measures such as productivity, safety and attendance.



• People with disabilities are more likely to stay on the job. The costs of job turnover, such as lost productivity and expenses related to recruitment and training, are well known to most employers.

• Hiring people with disabilities increases workforce morale. Many employers report that teamwork and morale improves when disabled workers become part of the staff.

• People with disabilities are an untapped resource of skills and talent. In many countries, people with disabilities have skills that businesses need, both technical job skills and transferable problem-solving skills developed in daily life.

• People with disabilities and their families and friends represent an overlooked and multibillion-dollar market segment. The annual disposable income of disabled persons is estimated to be US\$200 billion in the United States, \$50 billion in the United Kingdom and \$25 billion in Canada. Ignoring this market may mean losing not only the disabled consumer but his or her family and friends. As the population ages, so does the incidence of disability. It makes sense to have employees who know first-hand about the product and service needs of this consumer segment.

Source: ILO: EmployAbility: a resource guide on disability for employers in Asia and the Pacific (Bangkok, 2007).

### **Case Study 9**

### Blue Ribbon Employer Council (BREC)

Blue Ribbon Employer Council (BREC) is an initiative by the VCCI and Vietnam Assistance for the Handicapped (VNAH), funded by United States Agency for International Development (USAID). From the initial 25 members in September 2007, the BREC has today expanded into a membership of 160 local and international companies and provided jobs to 1,600 people with disabilities across Viet Nam.

The BREC recruits Vietnamese enterprises to be members and teaches them about disability and disability management. The goal is to convince employers of the benefits of hiring and retaining employees with disabilities. The BREC also provides technical assistance to



employers, serves as a forum for sharing experiences and conduct extensive job fairs. The BREC also documents the skills demanded by its members, and attempts to forecast future demand for worker skills to help vocational programme provide needed, marketable skills. It also maintains an employment database.

Source: Jody Heymann, et al.: Disability and Equity at Work (Oxford, 2014); and USAID: remarks by U.S. ambassador David Shear at the Blue Ribbon Employer Council Awards and launch of the USAID Disability Support Program (Hanoi, 2013).

### Case Study 10

### Examples of equality measures adopted at company level: New Zealand

The following are examples of strategies used in implementing equality programmes in New Zealand.

#### Recruitment

• Develop specific recruitment programmes for occupations where women and members of ethnic groups, for example, are under-represented. Recruiting efforts might involve communication with relevant women's networks and the use of such channels as the ethnic press and radio stations.

• Develop mature-age entry programmes and generally facilitate workforce re-entry through retraining programmes and the like.

• Liaise with relevant groups to determine strategies for increasing the representation of women, ethnic minorities or workers with disabilities, either in the enterprise or the community.

• Liaise regularly with educational institutions to facilitate the recruitment of technically and professionally qualified members of under-represented groups.

• Review company job advertisements and career information materials to eliminate any existing bias in content, language and pictures.



- Periodically review recruitment strategies for any remaining bias.
- Developing training courses in selection techniques where possible sources of discrimination are described and discussed.

#### Training and staff development

- Establish appropriate career development courses.
- Extend training activities to provide courses in necessary basic skills such as the local language, letter writing and basic office administration skills. Course access should not be limited to people already in positions requiring the use of these skills.
- Provide induction courses for all employees including, where relevant, specific groups of employees.
- Provide for individual career counselling and ensure that all relevant employees are told about this service.
- Identify training needs for designated groups in consultation with the group of workers directly concerned.
- Encourage members of the under-represented groups to apply for and to enrol in both external and internal training programmes, and review course nomination procedures.
- Introduce periodic equality orientation courses for all staff, providing information about equality and promoting continuing awareness of the issues.
- Examine existing training materials for biases. Develop new training materials for use in equality orientation courses and in equality segments for other training courses.

 Incorporate an equality segment into such training courses as public relations, supervisor development, effective management skills, interpersonal relations and organizational effectiveness.

#### Promotion and career opportunities

• Develop upward mobility programmes for low-level employees so they have the opportunity to acquire skills that will enable them, for example, through "bridging" positions, to compete for higher-level positions.



• Seek to end occupational stereotyping. Men are not the only gender competent to become engineers, nor are women the only ones competent to work as early childhood educators.

• Implement job redesign and job rotation programmes.

• Compile registers and/or personnel skills inventories using objective criteria so that managers become more aware of who is available for management and senior-level jobs

• Ensure that relevant merit is always the basic criterion for any appointment or promotion, and that team diversity and affirmative action measures are adequately considered.

Source: New Zealand Employers' Federation: A guide for employers on discrimination in employment (Wellington, 1993).

### **5.2 Useful content and websites**

key to successful implementation of non-discriminatory practices in companies, especially in SMEs, is access to advice and support from business networks and external support organizations.<sup>17</sup> Given their ability to bring businesses together in sharing experiences and good practices to implement equality measures, employers' organizations play an important role in realizing the "good business" case for equality in companies.

Employers, unions, Government and civil society all play an important role in disseminating information. The VCCI draws on the experiences of international counterparts at the ILO as well as other employers' organizations in the region that have complementary expertise. We hope the following list of links and resources will be useful to members and employers in general. Please do not hesitate to contact the VCCI at **http://www.vcci.com.vn/ or http://vcci-hcm.org.vn/** for more information.

<sup>17</sup> See TAFEP: Tripartite guidelines on fair employment practices (Singapore, 2006); EOC: Equal opportunity essentials kit for SMEs (Hong Kong, China, 2014); and EOC: "Sexual harassment in the workplace", in *Good management practice series* (Hong Kong, China, undated).



#### Viet Nam employer resources

Blue Ribbon Employer Council (BREC) Gender Economic Development (GED) working group Vietnam General Confederation of Labour (VGCL) Vietnam Women Entrepreneurs Council (VWEC) Vietnam Chamber of Commerce and Industry (VCCI) VCCI - Ho Chi Minh City Branch

http://ged.com.vn or gedworkinggroup@gmail.com http://www.congdoanvn.org.vn http://vwec.com.vn or contact@vwec.com.vn http://www.vcci.com.vn http://vcci-hcm.org.vn or info@vcci-hcm.org.vn

#### Government and civil society resources

Department of Gender Equality - Ministry of Labour, Invalids and Social Affairs

Ministry of Health (MoH)

Ministry of Labour, Invalids and Social Affairs (MOLISA)

REACH offers vocational training, career advice and job placement services for Vietnam's most disadvantaged youth.

Vietnam Women's Union

http://genic.molisa.gov.vn

http://www.moh.gov.vn

http://www.molisa.gov.vn

http://reach.org.vn or contact@reach.org.vn

http://hoilhpn.org.vn

#### **Regional associations and websites**

Employers Confederation of the Philippines (ECOP)
Equality at Work in China Project (knowledge-sharing platform)
Equal Opportunities Commission, Hong Kong (EOC)
Malaysian Employers Federation (MEF)
Singapore National Employers Federation (SNEF)
Tripartite Alliance for Fair and Progressive Employment Practices (TAFEP)

http://www.ecop.org.ph http://www.equalityatworkinchina.org http://www.eoc.org.hk http://www.mef.org.my http://www.snef.org.sg https://www.tafep.sg



### Useful links regarding employment of persons with disabilities in Viet Nam

Disability Research and Capacity Development (DRD)

Hanoi College of Information Technology (IT training for PWDs)

Sao Mai Vocational & Assistive Technology Centre for the Blind (Ho Chi Minh City)

Vietnam Assistance for the Handicapped (VNAH) (Ha Noi, Da Nang and Ho Chi Minh City)

Will to Live Centre (information technology training for PWDs)

World Concern Development Organization – teaching sign language (Hanoi, Thai Nguyen, Quang Binh and Ho Chi Minh City) http://www.drdvietnam.org or info@drdvietnam.com

http://www.estih.edu.vn or tc-estih@hanoiedu.vn

http://www.saomaicenter.org (website includes email contact information)

http://www.vnah-hev.org or vnah1@aol.com

http://www.nghilucsong.net or nghilucsong@gmail.com

http://ideo.org.vn or lkcuc@wcasia.org

#### **Resources in English**

Employability: a resource guide on disability for employers in Asia and the Pacific	http://www.businessanddisability.org/images/pdf/ employability.pdf
Employers' guide on promoting equal opportunity and treatment and preventing discrimination at work in China	http://www.ilo.org/wcmsp5/groups/public/asia/- ro-bangkok/ilo-beijing/documents/publication/ wcms_191675.pdf
Guidelines on including persons with disabilities in	http://askjan.org/media/
emergency evacuation plans	EmployersGuideEmergencyEvacuation.pdf
ILO Code of Practice: Managing Disability in the Workplace	http://www.ilo.org/public/libdoc/ ilo/2002/102B09_340_engl.pdf
ILO global business and disability network	http://www.businessanddisability.org
Job Accommodation Network (JAN)	http://askjan.org/index.html
Promoting equality and preventing discrimination at work in Cambodia	http://www.ilo.org/asia/whatwedo/publications/ WCMS_241571/langen/index.htm



#### World report on disability

http://www.businessanddisability.org/images/pdf/ World\_report\_Disability.pdf

#### Other

European Commission, Employment, Social Affairs and www.ec.europa.eu/social Equal Opportunities: The business case for diversity ILO Better Work Viet Nam programme betterwork.com/vietnam or vietnam@betterwork.org ILO Country Office Viet Nam http://www.ilo.org/hanoi http://www.itcilo.org/en International Training Centre of the ILO (ITC-ILO)

Women's Empowerment Principles

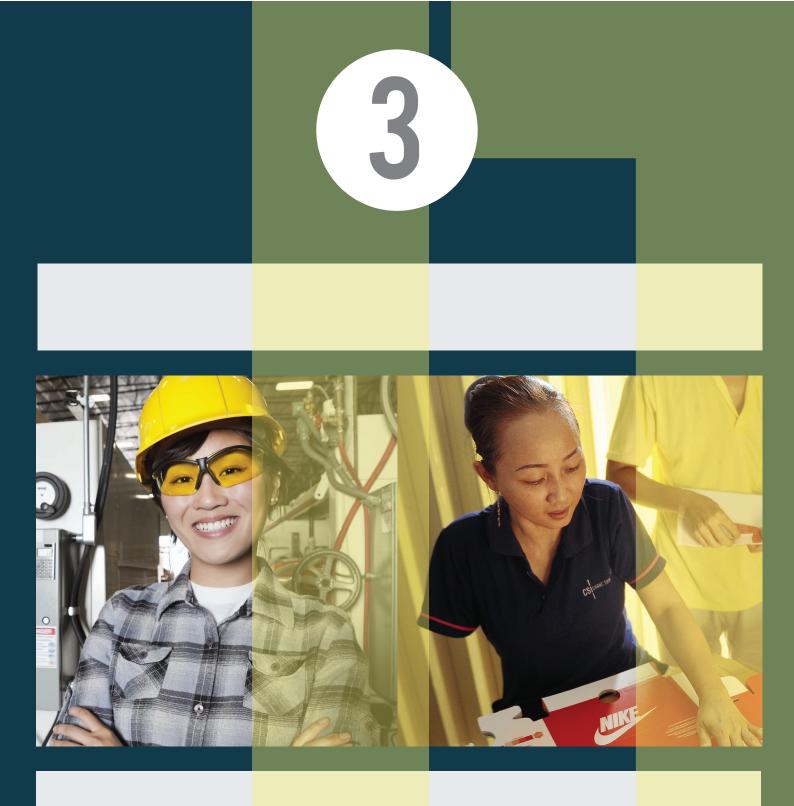
http://www.itcilo.org/en





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# RECRUITMENT PRACTICES THAT PROMOTE EQUALITY





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- ${\bf 3}$  Possible methods of implementation
- Practical guide in four parts

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2 Legal aspects of non-discrimination

#### Booklet 2: Tools to promote equality at work

- 1 What employers can do to promote equality
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#### Booklet 3: Recruitment practices that promote equality

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**2** Compelling business case for workplace diversity and equality – Fostering innovation and retaining talent

#### Booklet 2: Tools to promote equality at work

- 3 Discrimination in SA8000 and ISO 26000
- **4** Diversity management in European companies
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Elements of diversity and inclusion efforts by world region
 Mismatches in the supply and demand of labour,
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#### Booklet 3: Recruitment practices that promote equality

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 Key provisions on non-discrimination in Vietnamese law
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- **4** Checklist: How advanced is your equality management?
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#### Booklet 4: Management practices that promote equality

17 Maternity protection under Vietnamese law

### Foreword by the VCCI

t is with great pleasure that the Vietnam Chamber of Commerce and Industry (VCCI), presents this Code of Practice and the accompanying series of four guide booklets, jointly developed with the International Labour Organization (ILO) Bureau for Employers' Activities (ACT/EMP), to assist employers in promoting equality and preventing discrimination at work in Viet Nam.

Since ratifying the ILO Discrimination (Employment and Occupation) Convention, 1958 (No. 111) in 1997, Viet Nam has taken a number of major legislative steps to promote equality and non-discrimination in the workplace, which include prohibiting discrimination in the 2012 Labour Code. Preventing discrimination in the workplace is more than a legal obligation for employers, it also makes good business sense and represents an important component in being a socially responsible employer.

As a representative of Vietnamese employers, the VCCI aims to provide practical guidance to all employers in improving their business practices through the promotion of equality in non-discriminatory workplaces. It addresses questions that general managers, human resource managers, supervisors, workers' representatives and all company staff need to consider and apply in their daily work, including decisions related to recruitment, staff training, promotion, retrenchments and business practices such as sourcing and marketing.

The VCCI hopes that the Code of Practice and the accompanying series of four guide booklets will serve as useful references for employers. These materials are primarily intended to provide practical information, legal guidance and best practices from VCCI members.

We would like to express our appreciation to Ms Tran Thi Lan Anh of the VCCI Bureau for Employers' Activities, Ms Nguyen Thi Tuyet Minh of the VCCI Women Entrepreneurs Council and the VCCI Blue Ribbons Council for leading the development of the guide. We also thank Ms Nguyen Cuong Pham and Ms Nguyen Hong for providing expert guidance as well as VCCI member companies who participated the development of the guide. Finally, we would like to thank ILO ACT/EMP for supporting us along this journey.

We commend this guide to you and look forward to working with you.

Mr Vu Tien Loc President Vietnam Chamber of Commerce and Industry



## Foreword by the ILO

here is growing consensus that a diverse workforce significantly contributes to economic growth and development. In today's emerging markets, companies that seek to be leaders and set examples of building a productive workforce must address issues of discrimination in the workplace. Businesses that succeed in doing so create conditions for diversity and equality of opportunity and treatment in employment, and often going beyond what is required of the in national law. Employers who adopt such approaches may derive a number of business advantages, including a wider pool of talent from which to recruit, improved employee morale and loyalty, reduced exposure to legal challenges, reputational benefits and penetration of new markets. Overall, nondiscriminatory employment practices is not only the right thing, but also the smart thing for business to do.

Equality of opportunity and treatment in employment forms is enshrined in the ILO's Decent Work Agenda which promotes opportunities for all men and women to obtain decent and productive work in conditions of freedom, equity, security and human dignity. The ILO's Discrimination (Employment and Occupation) Convention (No. 111), adopted by ILO member States in 1958, remains the most comprehensive and widely ratified international instrument dedicated to the promotion of equality of opportunity and treatment in the world of work. The elimination of discrimination is one of the ground rules of a fair globalization and also an important condition for sustainable development.

It is therefore with great pleasure that the ILO-Bureau for Employers' Activities (ACT/EMP) has embarked on this partnership with the Vietnam Chamber of Commerce and Industry (VCCI) aimed at supporting the Chamber's efforts to prevent discrimination at the workplace and promote equal opportunities and treatment of all men and women in Viet Nam.

This set of five Guides on "Promoting equality and preventing discrimination at work in Vietnam" will hopefully help to raise awareness amongst VCCI's members on the economics behind having an inclusive workforce and providing better guidance to its members on non-discrimination. The Guides have been designed to establish a new VCCI training service on non-discrimination through the training of trainers. Advocacy materials to accompany the Guides will be developed and disseminated to members and other interested parties.

I would like to thank ILO colleagues who were involved in developing these Guides, including Jae-Hee Chang who led the coordination, Gary Rynhart for technical support and Alex Phuong Nguyen for supporting the development. I would also like to thank the ILO- Norway Partnership Cooperation for provision of funds necessary to develop the Guides and related activities.

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### **Acronyms & abbreviations**

- ACAS Advisory, Conciliation and Arbitration Service
- ACT/EMP Bureau for Employers' Activities
  - **EOC** Equal Opportunities Commission (Hong Kong, China)
  - ILO International Labour Organization
  - MOLISA Ministry of Labour, Invalids and Social Affairs
    - SMEs Small and medium-sized enterprises
    - **TAFEP** Tripartite Alliance for Fair and Progressive Employment Practices (Singapore)
      - VCCI Vietnam Chamber of Commerce and Industry





# Recruitment practices that promote equality: Introduction

he Vietnam Chamber of Commerce and Industry (VCCI), presents this Code of Practice and the accompanying four guides, jointly developed with the International Labour Organization (ILO) Bureau for Employers' Activities (ACT/EMP), to assist employers in promoting equality and preventing discrimination at work in Viet Nam. The package comprises five booklets: a Code of Practice for Employers and four practical guides on how to implement various aspects of equality in the workplace.

This, the third guide, offers employers and human resources personnel an in-depth overview of the numerous aspects of recruitment which might give rise to discrimination. Recruitment remains the most at-risk stage in employment for discrimination to occur, but the risk varies significantly from one company to another. Readers are recommended to skim through the table of contents and focus on those areas most relevant to their business and industry. For information on why investing in promoting equality and prevent discrimination in the workplace is important, refer to *booklet 1: The business case for equality at work*.





### 1 Reviewing recruitment procedures

nternational experience shows that — consciously and unconsciously — discrimination is more common during the recruitment process than in any other human resources practice. It is thus of key importance in realizing an equal workplace to ensure that recruitment policies and practices are free of discrimination. In working to promote equal opportunity, this is often the first area to address. Gender discrimination in recruitment remains common place in Viet Nam, with many advertisements openly state a preference for male applicants, even when there was no clear reason given why the vacant positions (accountant, chief executive officer and project manager) could not be filled by women.<sup>1</sup>

Companies derive considerable benefits from non-discriminatory recruitment practices. Hiring the right people for jobs is important for a variety of reasons:

- the right people will prove more productive;
- they learn faster;
- they require less supervision and training;
- they tend to be more satisfied with their jobs, and hence stay longer; and
- all of this frees up time for managers and supervisors to manage.<sup>2</sup>



<sup>1</sup>VietNamNet Bridge: Gender stereotypes hold women back (Hanoi, 2013).

Available at: http://english.vietnamnet.vn/fms/society/68459/gender-stereotypes-hold-women-back.html.

<sup>2</sup>See European Commission: Continuing the diversity journey: Business practices, perspectives and benefits (Luxembourg, 2008); Tripartite Alliance for Fair and Progressive Employment Practices (TAFEP): Fair employment: Leading fair employment practices handbook (Singapore, 2009).

#### BOOKLET 3

Elements of the recruitment and selection process include:

- development of job descriptions;
- job advertisements;
- application forms;
- conducting aptitude tests;
- job interviews; and
- in some cases, administering medical examinations.

The review aims to identify contents or procedures which might lead to discrimination and facilitate the modifications of those elements to ensure the recruitment process is fair and effective.

All policies and practices related to recruitment should be rigorously reviewed before establishing an equal opportunity process. Once a policy is in place, it should be periodically reviewed to ensure it remains current and relevant to the changing environment. A committee representative of the workforce or one set up in conjunction with unions, where they exist and including men and women, is useful for any review process. This enables management to hear from employees directly and receive feedback that might not otherwise be captured.

Sometimes the inherent job requirements require the employer to ensure the safety and security of existing staff, products or clients. In cases where inherent job requirements supersede considerations of equality, employers need to state this clearly and ensure that such requirements are never abused. For example, a job applicant with impaired vision should not be considered for employment as a driver or heavy equipment operator, where keen sight is an inherent job requirements.

### Tips and Tools 12 When inherent job requirements supersede equality

Inherent job requirements refer to the necessary, objective and proportionate requirements for an applicant or employee to perform the essential functions, duties and responsibilities of the job in question. In exceptional cases, some personal characteristic of an applicant or employee, perhaps sex, religion or the absence of a specific impairment or disability, may be an inherent requirement of a job. In these cases, distinction, exclusion or preference based on such personal characteristics is not deemed discriminatory.

#### For example:

- Visual non-impairment is an inherent requirement of a pilot's job.
- When hiring actors to perform female or male roles, a theatre may establish a gender criterion in the interests of authenticity.
- To ensure customer privacy and decency, gender can be an inherent requirement of the job of a rest-room attendant.
- A religious school may insist that teachers who lead pupils in prayer profess a certain religion.
- Employees working in a halal kitchen must be Muslim and certified to perform that job in accordance with established religious practice.
- Political opinion may be an inherent requirement for high-level government positions.

The inherent requirements of a job should be assessed on a case-by-case basis. The focus is on assessing the content of the position in question, not the organization as a whole. For example, a religious school can only require staff involved in religious functions to confess a religion. It would be discrimination to set religious criteria for clerical staff or maintenance personnel.

Source: ILO: Equality and non-discrimination at work in East and South East Asia: Guide (Bangkok, 2011).



### **2** The recruitment process

n most organizations, the recruitment process starts with preparation of such documents as a job description, a job advertisement and an application form. These should be prepared with the goal of conducting a non-discriminatory recruitment process based on merit.



## **2.1 Job descriptions**

o ensure that recruitment decisions are based on merit, employers should prepare clear job descriptions before initiating the recruitment process. Job descriptions should describe the main tasks and responsibilities together with the specific skills and experience needed to perform the job.

<sup>2</sup>ILO and the Ministry of Labour, Invalids and Social Affairs (MOLISA): Labour and Social Trends in Viet Nam 2009/10 (Hanoi, 2010). <sup>3</sup> Overseas Development Institute (ODI): Jobs for the future – Vietnam case study (London, forthcoming).



Recruitment practices that promote equality

### Tips and Tools 13 DOs and DON'Ts in drafting job descriptions

### **DOs**

Describe the main tasks and responsibilities of the job. Include the title of the job, and describe who the employee will work with and report to.

Describe carefully the specific skills, abilities, knowledge, education and experience needed to perform the key tasks and responsibilities of the job. For example, if there is a genuine need for an applicant to have a driving license, to be able to travel frequently or have an ability to undertake physically strenuous tasks, then these should be explained.

Describe the legitimate reasons for requiring the personal characteristic in questions should be stated in the person specification.

See tips and tools 12. When inherent job requirements supersede equality, above.

### X DON'Ts

Do not overstate the requirements and duties of a job. This may discourage certain qualified applicants from applying (for example, pregnant women, persons with family responsibilities or persons with disabilities).

Do not define specific educational qualifications, unless the job requires it. Allow people to offer relevant experience from any part of their life, not just qualifications or previous employment. Asking for a higher education level than is required for a job is a common instance of discrimination.

Do not state requirements related to sex, age, ethnicity, religion or other irrelevant personal characteristics, as anybody who is capable of doing the job is equally eligible to apply. Requiring the applicant to have a specific personal characteristic (for example, specific sex, religion or absence of a specific impairment) is only legitimate if this characteristic is an inherent requirement of the job.



Use neutral language and job titles, for example "camera operator" instead of "cameraman". If no neutral titles are available, include both female and male titles, for example "waiter/waitress" and "saleswoman/ salesman". Be explicit with your use of language: "needs to reach and bend to pick items from shelves" is better than "needs to be physically fit", and "needs to give clear information to English-speaking clients by phone" is better than "needs a good command of spoken English".

Do not stipulate such inherently subjective criteria as "must be attractive or good looking".

### **2.2 Job advertisements**

ob advertisements should reflect the job description, and state clearly the objective selection criteria by which the suitability of candidates will be assessed. The criteria should principally relate to qualifications, skills, knowledge and experience. If the company is implementing affirmative action measures, these should be mentioned in the job advertisement.

In Viet Nam, one in five out of 12,300 job postings in the country's four largest job portals – Vietnamworks, JobStreet, CareerBuilder and CareerLink – between mid-November 2014 and mid-January 2015 included gender requirements<sup>3</sup>. Among such job advertisements with gender preference, 70 per cent requested that the positions be filled by men whereas only 30 per cent wanted female applicants. By advertising gender preference, women's and even men's access to certain types of jobs is restricted, thereby depriving them of important opportunities in the labour market. These practices should be avoided.

<sup>3</sup> ILO and Navigos Search: Gender equality in recruitment and promotion practices in Viet Nam (Hanoi, 2015).



### Case Study 11

### Examples of discriminatory job advertisements

Salespersons, Media Equipment Company

Position required: Salesperson (Male) Requirements:

- Male, age 24-27, good looking.
- Honest person, good communicator.
- Active in social activities, volunteer or youth group activities.
- Know how to play at least 1 sport: badminton, football, tennis ...
- Vietnamworks, March 2015

#### Finance/Banking office worker – Commercial Bank

Position required: 3 Credit Specialists and 1 Accountant General requirements:

- Vietnamese citizens between 22 and 30 years old for women, and no older than 35 years old for men with good work ethics, no criminal record, good family history.
- Good communication skills and good health.
- Good looking, height at least 167cm for men, 156cm for women.
- Prefer applicants with previous experience in banking and finance.
   Application process:
- Handwritten application letter
- Completed application form
- Resume (form provided) with certified stamp from local government, no older than 6 months
- Medical certificate from a provincial hospital, no older than 6 months
- Notarised copies: relevant degrees and diplomas, transcript, language certificates.
- Notarised copies: national identity card, birth certificate, household registration

#### Nguoi Lao Dong Newspaper, May 2014

Source: Adapted from UNESCO Bangkok and Korean Women's Development Institute: Gender, Jobs and Education: Prospects and Realities in the Asia-Pacific (Bangkok, 2013), p. 40, using job postings from www.vietnamworks.com and http://vieclam.nld.com.vn/.



It is a good practice to include an **equality statement** in the job advertisement. This could read, for example, "we welcome applications from men and women from all parts of society" or "this post is equally open to people with disabilities". Strategic communication can also be used to encourage applicants from under-represented groups to apply for the post, even if the job could be considered a "non-traditional occupation" for a member of that group. For example, "women and men and persons of all ethnicities are encouraged to apply" for a post as manager or mechanic.

Employers should avoid recruitment solely on the basis of recommendations by existing staff. All vacancies should be advertised openly and widely disseminated through various channels to attract the broadest range of job applicants. The following section summarizes the characteristics of equal opportunity job advertisements.

# Guidelines for preparing job advertisements

✓ Job advertisements should provide sufficient information about the job vacancy, such as pay, location and the key tasks and responsibilities. Specify relevant job requirements such as the ability to travel frequently.

✓ State clearly the selection criteria. These should relate to qualifications, skills, knowledge and experience. They should be objective, clearly defined and ranked in order of priority.

✓ Do not impose criteria of sex, age, ethnicity, religion or other personal characteristics that are unrelated to the job. The advertisement should not include drawings or photos that could give the impression that only persons of a certain sex or ethnicity are sought or preferred by the employer.

✓ If the company is implementing affirmative action measures such as specific recruitment programmes targeting under-represented groups of employees (for example women or people with disabilities), these should be mentioned in the job advertisement, thereby encouraging members of these groups to apply.

✓ It is a good practice to include an equality statement in the job advertisement, such as "women and men and persons from all ethnicities are encouraged to apply".

✓ State clearly how applicants should apply, with interview and closing dates.



### Tips and Tools 14 Examples of job advertisements free of discrimination

Gender	Sex should not be a criterion for recruitment. Words or phrases that suggest preference for job candidates of a particular gender such as "female working environment" or "men only" should not be used in the job advertisements. Where practical job requirements dictate the need for employees of a particular sex, this must be supported by valid reasons. Examples: • "Women's fashion boutique requires salesgirl to model clothes while on the job."
Marital status	Marital status is an irrelevant criterion in employment. Jobs can be performed equally well by either married or single persons.
Ethnicity or national origin	Ethnicity or national origin should not be a criterion. Selection based on ethnicity or national origin is unacceptable. Job advertisements featuring statements such as "Vietnamese nationals" are therefore unacceptable without legitimate justifications.
Religion	Religion is unacceptable as a criterion for recruitment except in cases where employees have to perform religious functions as part of the job requirement. In such cases, the requirements should be clearly and objectively presented.
Age	Employers should not stipulate age as a requirement for employment. Words or phrases that suggest preference for job candidates of a particular age group should also not be used in job advertisements. Examples include "under 30 years", "young", "youthful working environment" or "fresh school leaver/fresh graduate".
	If the nature of the job is physically demanding, for example handling heavy cargo, rather than indicating an age cut-off the required physical characteristics or other job-related criteria should be clearly described.



	Examples: • "Candidates are required to load and unload sacks of rice of at least 10 kg each." • "Candidates are required to handle heavy equipment."
Language	If a job entails proficiency in a particular language, employers should justify the need for the requirement. This reduces ambiguity and minimizes incidence of misunderstanding between the job seekers and the recruiting party. Examples: • "English-language teacher for pre-school centre. Fluency in English required." • "Translator for a leading Chinese-language sports magazine. Proficiency in Mandarin Chinese is a must." • "Tour guides to lead Japanese/Indian tourist groups. Knowledge of Japanese/ Indian languages is essential."

Source: Adapted from TAFEP: Tripartite guidelines on non-discriminatory job advertisements (Singapore, 1999).

# Guidelines for placing a job advertisement

✓ The job advertisement should be widely disseminated to attract the broadest range of job

applicants. 🔘 See Define an equality action plan, section 3.3, Booklet 4: Management practices that promote equality.

Advertisements should not be posted in places where only certain groups of applicants will see them, such as male locker rooms or women's magazines.

Targeted media can be used to attract the right level of applicants in the job market (such as specialized newspapers or radio stations, professional journals and student magazines).

✓ As an affirmative action measure to attract applicants from a previously under-represented section of labour force, advertisements can be distributed through targeted channels, for example local ethnic communities or local support groups for people with disabilities or living with HIV.<sup>4</sup> <sup>(2)</sup> See Define an equality action plan, section 3.3, *Booklet 4: Management practices that promote equality.* 

4 Each of the seven manufacturing enterprises that took part in ILO Opportunity for All programme found that recruiting workers with disabilities or workers living with HIV brought positive influences into the workplaces. For more information see: http://vietnamnews.vn/in-bai/208580/disabled-people-get-help-to-find-work.htm.



## **2.3 Job application forms**

pplication forms should ask only for information relevant to assessing an applicant's suitability for the job in question. This is necessary to ensure that each candidate will be assessed fairly, based on criteria of merit. Do not pose questions that seek irrelevant personal information such as family situation, age of children, marital status or plans to have children. New recruits can be asked to provide personal information for administrative purposes after recruitment.

# Guidelines for developing job application forms

Application forms should only ask information that is directly relevant to the job requirements, for example work experience, skills, abilities, education and relevant professional qualifications.

The questions should focus on assessing the applicant's ability to perform the job, not on eliciting information about the applicant's person, such as his or her family situation or the province a person comes from.

If the position entails a special commitment, such as the need for frequent travel, the application form should include questions about applicants' ability and willingness to comply.

✓ The application form should **not** ask questions related to an applicant's personal status, for example whether single or married, family situation, spouse's employment and salary, number or age of children, pregnancy or intention to become pregnant. Neither should the form pose questions related to ethnicity, race, religion or social origin of the applicant.

Applicants should **not** be asked to provide personal medical information that is irrelevant to the position.

People with a disabilities should **not** be asked for information that a person without disabilities would not ordinarily be requested to provide.

Applicants should **not** be asked to submit a photograph with their application, unless some standard of physical appearance can legitimately be considered as an inherent requirement of the job.<sup>5</sup>



## **2.4 Shortlisting**

hortlisting and selection of candidates must be conducted on the basis of consistent selection criteria. These should be developed on the basis of the job description, and they should set out the qualifications, skills, knowledge and personal characteristics required for effective performance of the job. Selection criteria should be objective, clearly defined and can be ranked in order of priority or weight. Measurable standards should be defined for assessing candidates against all selection criteria.

Clearly defined objective selection criteria help reduce bias in the shortlisting process. The application review panel should do their best to discard all stereotyped or traditional assumptions about abilities and aptitudes of different kinds of people. They should instead focus, as objectively as possible, on the individual suitability of each applicant. In See tips and tools 15. Be aware of your biases.

If the company is implementing affirmative action measures, these should be given adequate attention in the shortlisting process. For example, alternatives to formal qualifications should be considered in shortlisting because in rural and mountainous areas, access to formal education and standardized testing can be limited.<sup>6</sup> Due attention should also be given to women's application at senior management levels if men traditionally dominate these roles.

## **Guidelines for shortlisting**

✓ Have shortlisting conducted by a review panel comprising men and women, rather than one person, to avoid prejudice or bias.

Conduct the shortlisting on the basis of the objective selection criteria outlined for the post.

Candidates should be assessed against measureable standards defined for each selection criterion.

<sup>&</sup>lt;sup>6</sup>ILO and MOLISA: Labour and Social Trends in Viet Nam 2009/10 (Hanoi, 2010).



<sup>&</sup>lt;sup>5</sup> These guidelines are adapted from Advisory, Conciliation and Arbitration Service (ACAS): Delivering equality and diversity (London, 2009); European Commission: Diversity at work - A guide for SMEs (Brussels, 2009); Equal Opportunities Commission (EOC): "Pre-hiring and post-hiring procedures", "Recruitment advertisements", "The use of consistent selection criteria", and "Guidelines for application forms design", in Good management practice series (Hong Kong, China, undated); New Zealand Employers' Federation: A guide for employers on discrimination in employment (Wellington, 1993); and TAFEP: Tripartite guidelines on fair employment practices (Singapore, 2006).

✓ Judge all applicants according to the same criteria. For example, do not impose higher requirements on women.

Avoid personal judgements and assumptions. Compare your scoring results with other panel members to check that points have been awarded on the evidence alone.

✓ Train people involved in shortlisting in non-discriminatory selection methods and ensure they are familiar with the relevant legal provisions.<sup>7</sup>

### Tips and Tools 15 Be aware of your biases

The word "bias" refers to partiality, prejudice, unfair influence or a one-sided view. Bias impairs a person's ability to make impartial, unprejudiced and objective decisions.

**Hidden bias** can be particularly problematic in human resources management, where it easily leads to discriminatory practices. Special attention should be paid in all HR management practices to ensure that the decision-makers' personal biases will not unconsciously influence their judgement. All human resources management decisions should be based on objective criteria, with adequate attention paid to team diversity and company affirmative action measures.

Staff responsible for recruitment should be trained in non-discriminatory recruitment practices. The training should also focus on the danger of generalizing about the abilities and aptitudes of men, women, people with disabilities or persons of different age or background. Presuppositions about what are properly "men's jobs" or "women's jobs", and stereotyped ideas about the kinds of job that are suitable for persons with some particular background should be avoided.

Sources: P. Babcock: "Detecting hidden bias", in HR Magazine (2006) Vol. 51, No. 2, February; EOC: "Pre-hiring and post-hiring procedures", and "Use of consistent selection criteria", in Good management practice series (Hong Kong, China, undated).

<sup>1</sup> The guidelines are adapted from ACAS: Delivering equality and diversity (London, 2009); European Commission: Diversity at work - A guide for SMEs (2009); EOC: "The use of consistent selection criteria" and "Pre-hiring and post-hiring procedures", in the Good management practice series (Hong Kong, China, undated); New Zealand Employers' Federation: A guide for employers on discrimination in employment (Wellington, 1993).



### Case Study 12

### Widespread gender biases in Viet Nam

Viet Nam maintains strong traditional ideas about gender characteristics and about what jobs are properly "women's jobs" or "men's jobs". These traditional roles are also reflected in the gender division of labour in Viet Nam.

Stereotyped ideas limit the choice of occupation and employment for both women and men. But they are especially harmful for women, since they result in lower educational levels and impaired employment opportunities for women. In 2007, 70.9 per cent of the female workforce had no technical training compared to 59.9 per cent for men.

Even as the workforce expanded from 38.4 million to 45.6 million, the share of women workers in total employment decreased from 49.7 percent in 2000 to 48.4 per cent in 2007. The widening gender gap between employed men and women is in part a reflection of the inequality of employment opportunities that women face in the labour market. The gap in the labour force participation rate between men and women widened from 7.3 percentage points in 2000 to 9 percentage points in 2007.

The gender gap is accentuated depending on where women work. Around 80 per cent of Viet Nam's 700,000 factory workers are women. Women tend to be sewers and helpers, while men are usually in higher paid occupations working as cutters and mechanics. Men are three times more likely than women to be supervisors. Women tend to work longer hours than men and are less likely to be promoted or receive training, even when they have been working at the factory longer than men. Women are also in poorer health, and women's average hourly wages (excluding bonuses) are just 85 per cent of men's. Female garment workers also reported less leisure time than men, because gender dynamics at home remain the same; women are working full time responsibilities in the home.



A recent study\* conducted in Viet Nam shows both horizontal and vertical gender segregation in the workplace. One in five companies interviewed admitted that women are clustered around certain job functions: accounting, office work, general affairs, and human resources, which are often lower skilled and pay less than men's job functions. Among job postings for managerial positions, up to 83 per cent indicated a gender preference for men. Significantly, all of job postings for directors only accept applications from male candidates.

Employers should be aware of these stereotyped ideas, and avoid letting them influence employment decisions. All recruitment decisions should be based on actual abilities of individual job applicants, not on qualities that applicants are assumed to have due to their sex and gender roles.



\*ILO and Navigos Search: Gender equality in recruitment and promotion practices in Viet Nam (Hanoi, 2015).

Sources: ILO - MOLISA: Labour and Social Trends in Viet Nam 2009/10 (Hanoi, 2010); D. Rees – Better Work: Improving conditions for women workers has a domino effect (London: Guardian, 2014); ILO and Navigos Search: Gender equality in recruitment and promotion practices in Viet Nam (Hanoi, 2015).



### **2.5 Selection and aptitude tests**

ell-designed, properly administered and professionally validated selection or aptitude tests can be a useful method of predicting candidate performance in a particular job. If selection tests are used, employers should ensure they are relevant to the job requirements and measure the candidates' actual ability to do the job in question.

Selection tests should be administered by staff trained in assessment methodologies and equal opportunity and treatment at work. Aptitude tests should be used, furthermore, as only one of several assessment methods. Test content and standards should be regularly reviewed to ensure that they are relevant to the job requirements and remain free of bias.

### **Guidelines for objective testing**

Selection and aptitude tests should correspond to the job in question, and should measure the appropriate levels of the skills and abilities defined in the competency profile (for example, lifting ability or language skills).

✓ In developing and administering written tests, special attention must be given to ensuring that candidates whose first language is not Vietnamese understand the instructions. Tests that are easy for speakers of Vietnamese as a first language may present problems to persons belonging to an ethnic minority, who may be less proficient in the language.

✓ All candidates without exception should take the same test.

<sup>&</sup>lt;sup>8</sup> The guidelines are adapted from European Commission: Diversity at work - A guide for SMEs (Brussels, 2009); EOC: "Interviewing procedure", and "Pre-hiring and post-hiring procedures", in the Good management practice series (Hong Kong, China, undated); and Commission for Racial Equality: Statutory Code of Practice on Racial Equality in Employment (London, 2005).



### Case Study 13

#### Discriminatory use of aptitude tests in the United Kingdom

Ms. Mallidi, an Asian woman who had worked for the Post Office on a casual basis for a number of years, was asked to take a written aptitude test as a condition of remaining in employment on a contractual basis. She failed the test, and her employment was terminated. Later, Ms. Mallidi found out that Caucasian casual workers had been given temporary or permanent employment contracts without having to take the aptitude test. She felt unfairly treated, and decided to bring legal proceedings claiming racial discrimination.

The tribunal found that whole batches of casual workers had been given contracts without passing a test. Nor was the Post Office able to explain why workers had to sit the test at certain times and in certain cases, but not in others. The tribunal concluded that the only grounds for the Asian woman's dismissal was her race. It awarded Ms. Mallidi compensation of nearly £20,000, including £10,000 for injury to feelings.

Sources: Mallidi v. The Post Office, Case No. 2403719/98 [2001] DCLD 47; UK Commission for Racial Equality: Statutory code of practice on racial equality in employment (London, 2005).



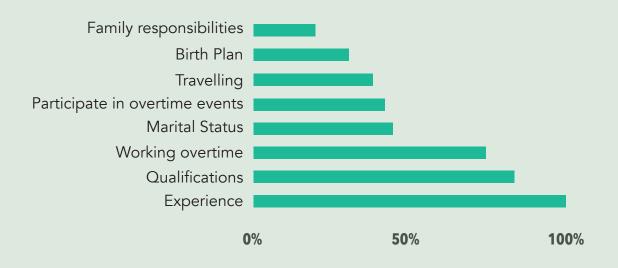


### **2.6 Job interviews**

ob interviews often represent the decisive stage of the recruitment process. It is thus particularly important that interviews are designed and conducted in a non-discriminatory manner. Interviewers should ask only questions relevant to assessing an applicant's suitability for the job in question. Interviewers should be aware of their personal biases, and take care not to make unwarranted assumptions about a candidate's abilities based on stereotypes.

Unfortunately in Viet Nam, the ability to work overtime, marital status, birth plan and family responsibilities remain among the main factors taken into consideration during job interviews. Given the prevalence of traditional gender roles, these factors put female recruits at a disadvantage?





Source: ILO and Navigos Search: Gender equality in recruitment and promotion practices in Viet Nam (Hanoi, 2015)

<sup>9</sup> ILO and Navigos Search: Gender equality in recruitment and promotion practices in Viet Nam (Hanoi, 2015).



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### Guidelines for preparing for an interview

Interviews, where possible, should be conducted by more than one person, and preferably by a panel of both men and women. Decisions by one person, whether a man or a woman, are more likely to be affected by personal bias.

Decide upon appropriate interview questions beforehand. Make sure the questions aim to identify the skills, experience and competences of the applicant in relation to the job description. Ask all candidates the same questions.

Ensure that interviewers have an agreed understanding of the selection criteria, and a general idea of the kind of information they need to satisfy those criteria.

Develop a scoring system set against the specifications you have defined to judge applicant responses.

Persons involved in interviewing should be trained in non-discriminatory selection methods, and should be familiar with the relevant legal provisions.

### **Guidelines for organizing an interview**

The interview time and place should be set so that all shortlisted candidates are able to attend.

Reasonable accommodation (for example in terms of accessibility) should be provided to job applicants with disabilities. See also Reasonable accommodation, section 9, Booklet 4: Management practices that promote equality.



### **Guidelines for interviewing**

The interview questions should relate only to job requirements. Focus on abilities, knowledge, experience and qualifications needed in the job.

Do not ask questions of a personal nature, for example concerning marital status or plans to have a child.

Due to inherent requirements of the job, for example, some questions may be perceived as discriminatory. In these instances the panel should explain the reasons for needing such information.

✓ If the position entails requirements such as willingness to work regular overtime or travel frequently, interviewers should explain these requirements and ask the candidate whether they will be able to meet them. These should be discussed objectively, without questions related to the applicant's marital status or family responsibilities.

Employers may ask applicants with disabilities or health conditions questions about their ability to perform specific job functions, or about the need for special facilities needed to perform them. Applicants should not be asked to provide general information about their disability or health status that is irrelevant to assessing their ability to perform the job.

Sometimes, employing the person who is in all other respects the best candidate will mean you must consider providing such things as language training, access facilities or new equipment.<sup>10</sup>

<sup>10</sup> The guidelines are adapted from ACAS: Delivering equality and diversity (London, 2009); European Commission: Diversity at work - A guide for SMEs (Brussels, 2009); EOC: "Interviewing procedure", in Good management practice series (Hong Kong, China, undated); and TAFEP: Tripartite guidelines on fair employment practices (Singapore, 2006).



### Tips and Tools 16 Interview DOs and DON'Ts

ΤΟΡΙϹ		
Age	Asking about years of working experience is acceptable.	Any question designed to discover someone's age.
Disability	<ul> <li>Inquiries about whether the applicant has the ability to perform specific job functions. Asking the applicant to describe or demonstrate how he or she would perform job tasks.</li> <li>Inquiries about whether the applicant will require special provisions to perform the job, but <b>only</b> when the applicant has an obvious disability, or when the applicant voluntarily discloses that he or she has a disability.</li> </ul>	General inquiries that are likely to elicit information on disabilities unrelated to ability to perform a specific job. For example, "Do you have any disabilities?" is unacceptable.
Education	Inquiries regarding degrees, courses, equivalent experience or training required for the specific job.	General questions about high- school or college degrees unrelated to the job.
Employment	Any question related to experience, strengths and weaknesses, promotions, accomplishments, current salary, salary requirements, reasons for leaving a position.	Any questions that do not relate to the job in question.



### Family status

Whether applicant has any activities, commitments or responsibilities that might prevent him or her from meeting work schedules or attendance requirements. Inquiries about an applicant's availability for evening or weekend work are acceptable, provided that you ask both male and female applicants, and provided that the position in fact requires or will require work on evenings or weekends. Do not inquire about whether the applicant is married or single, number and ages of children, spouse's job, spouse's or applicant's family responsibilities, child-care responsibilities, pregnancy, etc.

Do not direct questions to applicants on the basis of their particular sex — for example, asking women about child-care arrangements, or asking men about childsupport obligations.

Do not ask questions about availability for evening or weekend work if it is not a requirement for the position. This question is likely to have a discriminatory impact on applicants with families particularly on women.

Inquiries about an applicant's financial condition, bank accounts, credit history or credit rating that do not relate to the job in question. Good-credit requirements have been challenged as discriminatory because they may have an adverse impact on minorities.

Questions about home ownership or car ownership (unless owning a car is required for the job).

Height and weight

Financial status,

wealth or

social status

Inquiries about height or weight requirements necessary for the job or about whether the applicant has the ability to perform specific job functions

None, unless job related.

Any inquiry about height or weight not based on the actual job requirements.



	(without mentioning the person's height or weight). Must be able to prove that a specific minimum or maximum height or weight is required to perform the job.	If a specific height or weight requirement is set the employer must be able to prove that a specific minimum or maximum height or weight is required to perform the job.
Marital status	Vone.	Whether the applicant is married, single, divorced, separated, engaged, widowed.
National origin	Inquiries into applicant's ability to read, write and speak foreign languages when required for a specific job.	Questions about the applicant's lineage, ancestry, national origin, descent, place of birth or mother tongue, national origin of applicant's parents or spouse. How the applicant acquired the ability to read, write or speak a foreign language.
Pregnancy	Inquiries about the applicant's anticipated duration of stay on the job or anticipated absences, unless made equally to both male and female applicants.	Any question relating to pregnancy or medical history concerning pregnancy, or inquiries that might elicit answers based on pregnancy or family planning status. Note: To refuse to hire a woman solely because she is pregnant constitutes sex discrimination.
Race or colour	V None.	Any questions about race or colour.
Religion or creed	Questions about whether applicant can meet the work schedule with reasonable accommodation are acceptable. If the answer reveals the applicant's religious observance or practice, let the applicant know that a reasonable effort will be made to accommodate any religious needs should he or she be hired.	Questions about applicant's religious denomination, religious affiliation, church, pastor or religious holidays.



Residence	Inquiries about the applicant's address needed for future contact with the applicant.	Whether the applicant owns or rents a home (denotes economic class). Names and relationship of persons with whom the applicant resides.
Sex	None, unless sex is an inherent requirement of the job in question.	Reference to the applicant's sex, if a particular sex is not an inherent requirement of the job.
Union Affiliation	Vone.	Any questions about union affiliation. The Vietnamese Labour Code prohibits discrimination on grounds of membership in a trade union or the exercise of union activities.

Source: Adapted from Wake Forest University: Guidelines for interviewing applicants (Winston-Salem), available at: http://hr.wfu.edu; and University of North Carolina: Guidelines for interviewing job applicants (Charlotte), available at: http://legal.uncc.edu [accessed 8 May 2015].





Recruitment practices that promote equality

### **3 Pre-employment** medical examinations

In Viet Nam, medical test results are often required as part of the job application, particularly for low-skill positions. The pre-employment medical examination is regulated by the Ministry of Health through Circular 14/2013/TT-BYT, which include a sample medical certificate. The certificate includes a blood test for HIV, Hepatises B and syphilis; a urine test, a set of radiology tests and a gynaecological examination. This medical examination is repeated regularly throughout the workers' career.

However, medical examinations should not be conducted as a matter of routine, although they can legitimately be applied in limited cases, for example to assess the applicants' ability to perform the job or to ensure the health and safety of co-workers and customers (in those jobs where health requirements have been set by law).<sup>11</sup> Recruitment procedures sometimes include pre-employment medical examinations, usually conducted in the final stage of the process.

An employer who requires applicants to take a pre-employment medical examination should always explain to them the lawful purpose of the exam. If testing cannot be justified with reference to any of the above reasons, but is required only to exclude applicants with infectious diseases or a disability, or to screen out pregnant women, this constitutes discrimination. Requiring medical certificates as part of the job application package might unfairly discriminate against people with disabilities or living with HIV/AIDS. Discrimination against pregnant women, persons with disability and persons living with HIV/AIDS is a violation of Vietnamese law.

The employer should inform the doctor or institution conducting the examination about the purpose of the examination and the inherent requirements of the job in question. The examination should include only the medical and occupational tests needed to determine whether the applicant can perform the job.<sup>12</sup>

<sup>&</sup>lt;sup>12</sup> See EOC: "Pre-employment medical examinations", in Good management practice series (Hong Kong, China, undated).



<sup>11</sup> ILO: Code of practice on protection of workers' personal data, Article 6.7.

### **3.1 Pregnancy Tests**

mployers should not use pregnancy tests as a condition of hiring, except in those limited situations where the work in question is prohibited for pregnant women under the law or there is a recognized or significant risk to the health of the woman and child.<sup>13</sup> In most jobs, pregnancy does not affect a qualified female applicant's ability to perform the job, and the employer has no legitimate reason to require the applicants to take the test. Rejecting a qualified applicant because she is pregnant is discrimination. If the job requires physically strenuous tasks or working in a hazardous environment, the employer should inform all applicants about this in the job advertisement.

🧆 See also Maternity protection and Work-family balance, sections 7 and 8, Booklet 4: Management practices that promote equality.

### 3.2 HIV Testing

n Viet Nam, there are approximately 240,000 adults age 15 and up living with HIV.<sup>14</sup> With proper care and treatment, many people living with HIV/AIDS lead normal, healthy lives, including having a job. Real or perceived HIV status should not be grounds for discrimination preventing recruitment or continued employment, or be a cause for termination of employment. Vietnamese law only requires flight crews and special occupations in the security and defence domains to undergo HIV testing before employment.<sup>15</sup> In all other occupations, the applicant may lawfully refuse to undergo the test. Requiring employees or job applicants to take a compulsory HIV test for jobs where absence of an infectious disease cannot be considered a genuine job requirement is strictly prohibited under the 2006 Vietnamese Law on HIV/AIDS Prevention and Control (Article 8.7) and ILO Recommendation Concerning HIV and AIDS and the World of Work, 2010 (No. 200) (Article 25). In addition to the occupations outlined, compulsory HIV testing is permissible only with an official request for judicial appraisal or a decision of an investigative body, a people's procuracy or a people's court (Article 28.1).



 <sup>&</sup>lt;sup>13</sup> ILO Maternity Protection Convention, 2000, (No. 183), Article 9.2.
 <sup>14</sup> Estimates by UNAIDS (Hanoi, 2013).
 <sup>15</sup> Decree 108/2007/ND-CP.



# **3.3 Assessing ability to perform the job**

mployers may ask applicants to undergo an examination to test their ability to perform the inherent requirements of the job. Applicants either with or without a disability can be asked to take a test. When assessing the physical capacity of an applicant with a disability, employers should consider whether reasonable revisions of work procedures or practices, such as adjustment of the work station or use of special equipment, would enable the applicant to perform the essential job functions. Rejecting an applicant with a disability who is able to perform the essential job functions with the help of reasonable accommodation constitutes discrimination, and violates the Law on Persons with Disabilities (Article 33).

If the applicant with a disability is unable to perform the job concerned, or the adjustments needed would cause unjustifiable hardship to the employer, the employer can lawfully reject the applicant in question.

See also Reasonable accommodation, section 9, Booklet 4: Management practices that promote equality.



### **3.4 After the medical examination**

here applicants are not offered jobs after the medical examination, the employer should explain the reasons to them clearly.
If the applicant was rejected due to a disability, the employer should explain:
(1) why the applicant is considered unable to perform the inherent requirements of the job; and (2) why the adjustments required to assist in performing the job would impose unjustifiable hardship upon the employer.

• If the applicant was rejected due to an infectious illness, the employer should explain to the applicant the reasonable need to protect public health.

### Note

Under no conditions may an employer justifiably reject a female applicant solely on the basis of pregnancy, marital status or because she is a mother.





Recruitment practices that promote equality

## **3.5 Confidentiality of** workers' health data

he clinical information supplied by the applicant to the doctor or institution conducting the medical examination is confidential; it should not be disclosed to the employer without the consent of the applicant. Instead of providing full medical details to the employer, it is more appropriate for the examining doctor or institution to give the employer a report including only the medical information relevant to the job. Disclosure of information is justified only in light of specific job requirements or for reasons of public health or safety.<sup>16</sup>

Both the ILO Code of practice on protection of workers' personal data and the ILO Recommendation concerning HIV and AIDS in the World of Work, 2010 (No. 200) prohibit disclosure of information on employees' or job applicants' health status.

#### **DID YOU KNOW?**

Vietnam ratified United Nations Convention on the Rights of Person with Disabilities (CRPD) in Hanoi in December 2014. The full text is available at: http://www.un.org/disabilities/ documents/ convention/convoptprot-e.pdf

On work and employment, the CRPD prohibits discrimination on the basis of disability with regard to all matters concerning all forms of employment, including conditions of recruitment, hiring and employment, continuance of employment, career advancement and safe and healthy working conditions.

According to the 2009 Census data, among the 78.5 million people age 5 years or older in Viet Nam, almost 6.1 million, or 7.8 per cent, live with one or more disability in seeing, hearing, walking or cognition. Of the 6.1 million people with disabilities, 385,000 have severe disabilities.

<sup>16</sup> See EOC: "Pre-employment medical examinations", in *Good management practice series* (Hong Kong, China, undated).



## 4 Records and post-recruitment procedures 4.1 Staff records

fter an applicant has been hired, the employer can collect personal information to arrange medical benefits or education allowances, or to ascertain whom to notify in case of emergency. Information can be requested, for example, regarding the employee's spouse, number of children and next of kin. The employers may also request the employee to provide more detailed medical information in order to help the employee in the event of emergency. All medical information should be kept confidential and should not be released without the written consent of the employee.

# 4.2 Records of the recruitment process

mployers are advised to retain records of shortlisting scores, interviews and selection tests for at least 12 months. This will leave them in a position to deal with any subsequent complaints of discrimination in the selection process. It is a good practice to review the company recruitment outcomes from time to time, checking that the recruitment processes remain unbiased and equitable.

### **4.3 Post-recruitment procedures**

mployers should inform all shortlisted candidates of the recruitment decision as soon as possible. It is a good practice to provide feedback to unsuccessful candidates if requested.<sup>17</sup>

<sup>17</sup> See EOC: "Pre-employment medical examinations", in *Good management practice series* (Hong Kong, China, undated).



Recruitment practices that promote equality

### **5 Induction training**

ost companies provide new recruits with training to introduce them to their new work environment. Induction training should include job training, orientation and an introduction to company policies including those describing acceptable behaviour in the workplace.

Effective orientation and job training helps new employees to understand their duties and responsibilities as well as expected standards of performance. This helps to improve understanding and communication between management and workers, promotes higher productivity, and reduces potential workplace disputes. Induction training also offers the employer an opportunity to assess current capacity and potential among the new recruits, and to tailor further on-the-job training programmes to their needs.

Introduction to company policies and practices familiarizes new employees with the organizational culture, and should include explanations of the company's commitment to equal opportunity and treatment. Induction training should introduce recruits to the following areas:

- what rights and responsibilities employees have both under legislation on discrimination and equality and under internal company regulations and policies.
- what constitutes acceptable and unacceptable conduct in the workplace in the light of company's policies regarding discipline and harassment.
- See Harassment, section 6, Booklet 4: Management practices that promote equality.

• what company mechanisms are available for handling grievances, including complaints about discrimination or harassment against colleagues or managers.

See Dealing with discrimination-related complaints, section 4, Booklet 4: Management practices that promote equality.

Induction programmes should be tailored to the various needs of new employees, for example first-time entrants to the workforce, those undergoing internal job change or promotion, persons returning to the workforce after time away for family responsibilities, older workers, and members of particular racial groups. Where applicable, a "buddy" or mentor may be appointed to help guide the new employee.<sup>18</sup>

<sup>18</sup> See Commission for Racial Equality: Statutory code of practice on racial equality in employment (London, 2005); ILO: Good practices: Induction training kit, Better Factories Cambodia project (Phnom Penh, 2007); and New Zealand Employers' Federation: A guide for employers on discrimination in employment (Wellington, 1993).



### 6 Recruitment through employment agencies

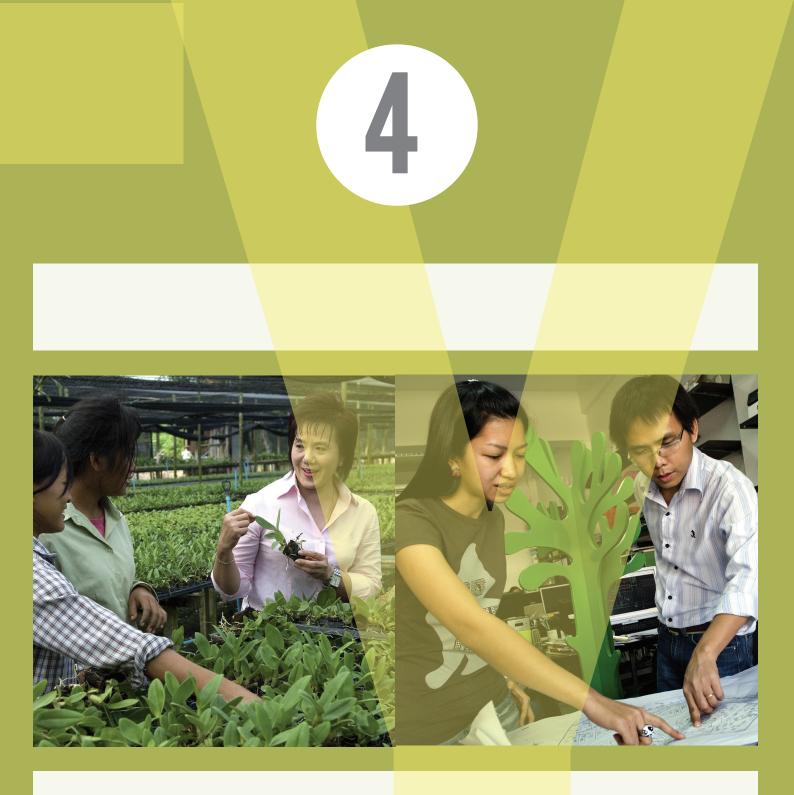


here an employment agency or some other third party is engaged to help recruit staff, the employer should inform the agency about company commitment to equality and non-discrimination in employment. The employer should also check the agency representatives' knowledge and use of equality practices, and advise them to comply with the company's equality policy, affirmative action measures, and recruitment guidelines. This is necessary to ensure that the agency recommends candidates based on merit.

Employers should never ask employment agencies to apply discriminatory selection criteria in shortlisting job applicants or selecting temporary staff for their use. If the client company requests the employment agency to discriminate in the selection of candidates, the employment agency should remind the client company of legal prohibitions regarding discrimination.

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### MANAGEMENT PRACTICES THAT PROMOTE EQUALITY



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### Foreword by the VCCI

t is with great pleasure that the Vietnam Chamber of Commerce and Industry (VCCI), presents this Code of Practice and the accompanying series of four guide booklets, jointly developed with the International Labour Organization (ILO) Bureau for Employers' Activities (ACT/EMP), to assist employers in promoting equality and preventing discrimination at work in Viet Nam.

Since ratifying the ILO Discrimination (Employment and Occupation) Convention, 1958 (No. 111) in 1997, Viet Nam has taken a number of major legislative steps to promote equality and non-discrimination in the workplace, which include prohibiting discrimination in the 2012 Labour Code. Preventing discrimination in the workplace is more than a legal obligation for employers, it also makes good business sense and represents an important component in being a socially responsible employer.

As a representative of Vietnamese employers, the VCCI aims to provide practical guidance to all employers in improving their business practices through the promotion of equality in non-discriminatory workplaces. It addresses questions that general managers, human resource managers, supervisors, workers' representatives and all company staff need to consider and apply in their daily work, including decisions related to recruitment, staff training, promotion, retrenchments and business practices such as sourcing and marketing.

The VCCI hopes that the Code of Practice and the accompanying series of four guide booklets will serve as useful references for employers. These materials are primarily intended to provide practical information, legal guidance and best practices from VCCI members.

We would like to express our appreciation to Ms Tran Thi Lan Anh of the VCCI Bureau for Employers' Activities, Ms Nguyen Thi Tuyet Minh of the VCCI Women Entrepreneurs Council and the VCCI Blue Ribbons Council for leading the development of the guide. We also thank Ms Nguyen Cuong Pham and Ms Nguyen Hong for providing expert guidance as well as VCCI member companies who participated the development of the guide. Finally, we would like to thank ILO ACT/EMP for supporting us along this journey.

We commend this guide to you and look forward to working with you.

Mr Vu Tien Loc President Vietnam Chamber of Commerce and Industry



### Foreword by the ILO

here is growing consensus that a diverse workforce significantly contributes to economic growth and development. In today's emerging markets, companies that seek to be leaders and set examples of building a productive workforce must address issues of discrimination in the workplace. Businesses that succeed in doing so create conditions for diversity and equality of opportunity and treatment in employment, and often going beyond what is required of the in national law. Employers who adopt such approaches may derive a number of business advantages, including a wider pool of talent from which to recruit, improved employee morale and loyalty, reduced exposure to legal challenges, reputational benefits and penetration of new markets. Overall, nondiscriminatory employment practices is not only the right thing, but also the smart thing for business to do.

Equality of opportunity and treatment in employment forms is enshrined in the ILO's Decent Work Agenda which promotes opportunities for all men and women to obtain decent and productive work in conditions of freedom, equity, security and human dignity. The ILO's Discrimination (Employment and Occupation) Convention (No. 111), adopted by ILO member States in 1958, remains the most comprehensive and widely ratified international instrument dedicated to the promotion of equality of opportunity and treatment in the world of work. The elimination of discrimination is one of the ground rules of a fair globalization and also an important condition for sustainable development.

It is therefore with great pleasure that the ILO-Bureau for Employers' Activities (ACT/EMP) has embarked on this partnership with the Vietnam Chamber of Commerce and Industry (VCCI) aimed at supporting the Chamber's efforts to prevent discrimination at the workplace and promote equal opportunities and treatment of all men and women in Viet Nam.

This set of five Guides on "Promoting equality and preventing discrimination at work in Vietnam" will hopefully help to raise awareness amongst VCCI's members on the economics behind having an inclusive workforce and providing better guidance to its members on non-discrimination. The Guides have been designed to establish a new VCCI training service on non-discrimination through the training of trainers. Advocacy materials to accompany the Guides will be developed and disseminated to members and other interested parties.

I would like to thank ILO colleagues who were involved in developing these Guides, including Jae-Hee Chang who led the coordination, Gary Rynhart for technical support and Alex Phuong Nguyen for supporting the development. I would also like to thank the ILO- Norway Partnership Cooperation for provision of funds necessary to develop the Guides and related activities.

#### **Deborah France-Massin**

**Director** ILO Bureau for Employers' Activities





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**Esoftflow Co., Ltd**, Hanoi Esoftflow specializes in professional visualizations for the real estate sector and beyond. They have approximately 350 employees.

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### **Acronyms & abbreviations**

- ACAS Advisory, Conciliation and Arbitration Service
- ACT/EMP Bureau for Employers' Activities
  - **CEDAW** Convention on the Elimination of All Forms of Discrimination against Women
    - **CSR** Corporate social responsibility
    - **ECOP** Employers Confederation of the Philippines
    - **EOC** Equal Opportunities Commission (Hong Kong, China)
    - ILO International Labour Organization
  - MOLISA Ministry of Labour, Invalids and Social Affairs
    - **PWD** People with disabilities
    - **TAFEP** Tripartite Alliance for Fair and Progressive Employment Practices (Singapore)
      - VCCI Vietnam Chamber of Commerce and Industry
    - VCGL Vietnam General Confederation of Labour



## Management practices that promote equality: Introduction

he Vietnam Chamber of Commerce and Industry (VCCI), presents this Code of Practice and the accompanying four guides, jointly developed with the International Labour Organization (ILO) Bureau for Employers' Activities (ACT/EMP), to assist employers in promoting equality and preventing discrimination at work in Viet Nam. The package comprises five booklets: a Code of Practice for Employers and four practical guides on how to implement various aspects of equality in the workplace.

The fourth guide in the series provides tips for employers to promote equality throughout the employment process. Following the guidelines set out in this Code of Practice and the accompanying series of guide booklets should guarantee fair and equal treatment and opportunities for all employees. Sections 1 to 10 outline legal requirements and best practices on creating an equitable workplace for all employees, regardless of their background. Human resources are a business's greatest asset, and employers should take good care of them. Adherence to the principle of equal opportunity and treatment in all human resources decisions encourages employees to contribute their full capacity to the company's success. Fair treatment of employees is also a legal responsibility of employers under the provisions of the Labour Code and includes defining and assigning work, vocational training, advancement, promotion,







remuneration, granting of social benefits, discipline or termination of employment contracts. For further information, see Equal opportunities and treatment at work, section 2.2, *Code of Practice for Employers.* 

Section 11 looks beyond the company's human resources practices to their daily business practices. Applying equality and non-discrimination practices not just to employees but also to customers, clients and contractors helps to ensure that companies maximize the potential benefits of these policies while minimizing the costs.

For information on why it is important to invest in promoting equality and preventing discrimination in the workplace, refer to *Booklet 1: The business case for equality at work*.





### <sup>1</sup> Pay and benefits

mployers should pay employees wages commensurate with the value of their jobs. Both base salary and entitlements to any salary increments or benefits should be determined according to objective criteria, without discriminatory bias. The principle of "**equal pay for work of equal value**" or "**pay equity**" applies to all workers, including workers on fixed duration contracts, casual workers, and piece-rate employees. It covers all cash and in-kind benefits paid by the employer arising from the workers' employment. Eligibility for all salary increments, benefits, facilities and services needs to be based on objective criteria and applied in a nondiscriminatory way.

Individual wage differences due to performance ratings should be paid based on a fair performance appraisal system without bias or discrimination. Employers should pay careful attention to the design and application of performance appraisal systems, however, since performance pay is much more likely to give rise to discrimination than seniority pay or other salary increments or benefits based on objective measures. Prejudice and partiality in performance appraisal systems leads to biased performance ratings, and consequently to discrimination in payment of performance increments.

See also Performance management and appraisals, section 3, below.

Employees should always be entitled to know how their pay is calculated, including calculations of piece-rate wages or performance pay.



# **1.1 Guidelines for pay equity**

Ensure your company pays all employee remuneration commensurate with the value of the job they are performing. Value of work should be defined with reference to such criteria as skills, effort needed, degree of responsibility and conditions of work related to the job in question.

✓ Never discriminate against persons or groups of workers by allowing gender, sex, marital status, race, colour, social class, belief, religion, HIV status, disabilities, the reason of establishing, joining trade union and participating in trade union activities or any other non-job-related factor influence the remuneration level of any job.

- ✓ Pay all cash and in-kind benefits, including the following, in a non-discriminatory manner:
- Seniority and attendance bonuses;
- Housing allowances or subsidized dormitory accommodation;
- Transportation facilities or allowances;
- Family allowances and increments based on marital status;
- Pensions;
- Private health insurance plans;
- Commissions and bonuses;
- Entitlement to annual leave and holiday allowances;
- Lunch vouchers, discount travel services or any other in-kind benefit with monetary value;
- Any other fringe benefits available to employees and workers; and
- Bonuses.

Calculate seniority or continuous service-based benefits (for example, seniority and attendance bonuses, paid sick leave, paid annual leave and maternity benefits) based on cumulative total length of uninterrupted service in the enterprise. This also applies to workers on fixed duration contracts.

✓ Make sure that company internal regulations, rules, requirements and practices regarding access to salary increments, benefits, facilities or services are objective. No distinctions should be made on the grounds of sex, race, origin or any other personal characteristic.



Ensure that performance appraisal systems used to calculate the performance pay are designed and applied in a fair and non-discriminatory way.<sup>1</sup>

According to the 2012 Labour Code of Viet Nam, wage includes "remuneration which is based on the work or position, as well as wage allowances and other additional payments". Employers shall ensure that the wage is paid equally without gender-based discrimination against employees performing work of equal value (Article 90). To be fully compliant with Labour Code in Viet Nam and international standards, equal remuneration should be provided not only for the same, equal or similar work, but also for work that is of an entirely different nature which is nevertheless of equal value. The principle of **equal pay for work of equal value** must govern all components of a worker's remuneration package. That includes health care, family allowances, travel expenses, and benefits granted exclusively to help the worker do his or her job.

To correctly apply the principle of equal pay for work of equal value, see tips and tools 7 and 8, section 3.2, Booklet 2: Tools to promote equality at work.

## **1.2 External market factors impacting on pay**

obs that are different in nature but equal in value should receive the same remuneration. At the least, differences in remuneration should not be based on the sex, ethnicity, trade union membership or any other arbitrary personal characteristic of the workers. Pay differences that can be entirely explained by labour market factors beyond the control of the employer are, in principle, non-discriminatory. For example, if the value of two jobs is equal, but the employer needs to pay a premium to attract qualified candidates for one of the jobs due to scarcity of required technical skills in the labour market, paying that premium does not necessarily constitute pay discrimination. Even so, the labour market as a whole may operate in a discriminatory way, for example if it makes it more difficult for women to obtain the needed technical skills.

<sup>&</sup>lt;sup>1</sup>ILO: Equal remuneration: General survey of Committee of Experts on the Application of Conventions and Recommendations, International Labour Conference, 72nd Session, (Geneva, 1986); Advisory, Conciliation and Arbitration Service (ACAS): Delivering equality and diversity (London, 2009); Equal Opportunities Commission (EOC): Code of practice on the Race Discrimination Ordinance (Hong Kong, China, 2009); and Commission for Racial Equality: Statutory code of practice on racial equality in employment (London, 2005).



In the same way, regional pay differences may also affect salaries in different branches of the company. While individual employers may not have much impact on these external factors, they should commit their companies to pay equity and promote it actively within their spheres of influence. To realize the potential business benefits that equality can bring to their company, employers need to pay all their employees at a fair and equitable level.

# 2 Terms and conditions of work

- t is unlawful for employers to discriminate in offering the terms and conditions of work, including the following:
- Pay and benefits 🐵 see Pay and benefits, section 1, above.
- The assignment of work and duties;
- Hours of work, including overtime;
- Annual leave entitlement;
- Sickness leave; and
- Maternity and paternity leave <sup>(()</sup>) See Maternity protection and Work-family balance, sections 7 and 8, below.

Employers should assign duties to workers in an equal and fair manner. Giving some groups of workers more hazardous tasks than other employees constitutes discrimination. Extending an unjust preference to some employees by consistently giving them less demanding tasks would be discriminatory. Bullying certain employees by consistently assigning them the least pleasant assignments can also be considered harassment.

Employers should ensure that the workplace<sup>2</sup> is safe and free of both physical and mental health hazards. Harassment in the workplace is itself an occupational hazard. It causes fear, stress, anxiety and physical sickness among its victims. Employers should ensure that no harassment is tolerated in the workplace. See also Harassment, section 6, below.

<sup>2</sup> ILO Occupational Safety and Health Convention, 1981 (No. 155) defines health as "not merely the absence of disease or infirmity ... [but also] the physical and mental elements affecting health which are directly related to safety and hygiene at work".



Hours of work should also be allocated in a fair manner. Employees should never be forced to work overtime. Overtime arrangements should be negotiated, allowing workers' organizations, where they exist, and the employees directly concerned to present their views on the issue.

It is a good practice to take employees' special needs into account when allocating work shifts and holiday periods. Where possible, for example, flexibility should be extended to workers with family responsibilities in terms of working time arrangements, or to ethnic minority workers in terms of holidays during their traditional festivals, unless this causes undue hardship in the work organization. See also Reasonable accommodation, section 9, below.

# Operation 3 Performance management and appraisals

ffective performance management entails objective appraisal systems based on measurable
 and quantifiable standards. Fair appraisal systems are essential to ensure that employees
 are recognized, rewarded and promoted according to their merit and contributions.

The information collected in fair performance appraisals should guide human resources management decisions in the following areas:

• providing a basis for employment decisions such as salary increments, bonuses, promotions, transfers, termination and retention.

- identifying employee potential for career development.
- establishing relevant training and development plans.

• assisting management in business planning by providing well-documented information on the organization's workforce.



Performance appraisals should focus on reviewing actual performance of specific tasks as measured against impartial and objective standards. Personal assumptions or stereotyped ideas about capabilities of different types of people should not be allowed to affect judgements. Biased assessment results easily lead to discrimination. Fairness of the appraisal system is particularly important when performance is linked to promotion or to a benefit such as pay or bonuses.

See tips and tools 15. Be aware of your biases, Booklet 3: Recruitment practices that promote equality.

# 3.1 Guidelines for conducting performance appraisals

✓ The performance of all staff should be periodically reviewed against fair and objective performance criteria to assess past work performance and determine potential for development or promotion.

✓ The performance assessment criteria should be clear, objective and fair, and they should be made available to all workers.

✓ The performance management system and appraisal criteria should be developed and regularly reviewed in consultation with workers' organizations or, where these organizations are not present in the company, with representatives of directly concerned employees. Employees should also be allowed to provide feedback on the implementation of the appraisal system.

Supervisors and managers should be trained in how to conduct fair employee work appraisals.

Each employee's past performance should be reviewed, and clear and measurable performance appraisal goals should be set for the next period. Individual performance goals need to be mutually agreed between the employee and the supervisor/manager at the beginning of a new performance review cycle.<sup>3</sup>

<sup>&</sup>lt;sup>3</sup> The guidelines are adapted from New Zealand Employers' Federation: A guide for employers on discrimination in employment (Wellington, 1993); Tripartite Alliance for Fair and Progressive Employment Practices (TAFEP): Fair Employment: Leading fair employment practices handbook (Singapore, 2011); and Commission for Racial Equality: Statutory code of practice on racial equality in employment (London, 2005).



## 4 Training and development

raining plays a central role in promoting equitable career progression among all groups of employees. For this reason it is important that employers do not discriminate in the arrangements they make for training, transfer or other development opportunities. It is a good practice to adopt a policy on training, transfer and development, describing the range of development opportunities open to all staff.

Eligibility for training and development should be determined with reference to objective selection criteria. Adequate attention should also be given to affirmative action measures. Takeup of training and other development opportunities should be monitored regularly to identify disparities between different groups of workers by such features as sex, disability or origin. Where significant disparities exist, steps need to be taken to encourage the under-represented groups to apply for training. In Viet Nam, there is a special need to encourage women's participation in training that leads to employment with opportunities for advancement and promotion.

## 4.1 Guidelines for training and development

Employers should provide employees with access to career training and other individual development opportunities. All eligible staff should have the same access to training, regardless of whether they are women or men or whether they work part-time or full-time.

✓ The range and scope of job training provided should give all employees an equitable basis for career development. Adequate attention should be paid to advancing goals defined in company affirmative action measures.

✓ When opportunities for training arise, employers should, so far as possible, inform all eligible employees of this opportunity and the application procedures. Employers should assess all interested



candidates based on objective selection criteria and, to ensure that no one is overlooked, with adequate attention to company affirmative action measures.

✓ An overall training plan should be developed based on regular reviews of company training needs. Planning should take into account both individual and group training needs. Workers' organizations, where they exist, and representatives of directly concerned employees (such as women or persons with disabilities) should participate in the development of the training plan.

Individual development objectives and individual training plans should be mutually agreed between the employee and his/her supervisor.

Managers and supervisors should encourage all eligible workers to apply for training.

Training sessions should be flexibly organized so that all eligible employees can attend. For example, training after working hours or far from the workplace may not suit employees with family responsibilities.

Employees should be given the opportunity to provide feedback on the training.<sup>4</sup>

## 5 Promotion and career development

n 2009, only 23 per cent of all managers in Viet Nam were women, ranking the country 76 out of 108, even though women made up 48 per cent of the total labour force<sup>5</sup>. Interestingly, women made up about half of the number of workers with tertiary education which can be translated into the lack of promotional opportunities for well educated women in Viet Nam<sup>6</sup>.

The career development of individual employees should be determined solely by their personal abilities and motivation, without interference of discrimination or bias. Promotion decisions should be based on merit. In addition, diversity in team composition and possible affirmative action measures need to be taken into account.

<sup>4</sup> See Commission for Racial Equality: Statutory code of practice on racial equality in employment (London, 2005); TAFEP: Tripartite guidelines on fair employment practices (Singapore, 2011); and New Zealand Employers' Federation: A guide for employers on discrimination in employment (Wellington, 1993).



Employers should make an active attempt to ensure that managers responsible for employee promotions are trained not to allow personal biases or stereotyped assumptions to intervene in the decision-making process. To ensure that promotions are decided in a non-discriminatory way, the procedures should be the same as those used for recruitment. The position should be advertised internally or externally, and the applicants' eligibility assessed against pre-determined selection criteria.

# 75.1 Guidelines for nondiscriminatory promotion

✓ It is a good practice to adopt a formal promotion policy and procedure. Both policy and criteria should be publicized among all employees and managers. Where no promotion policy has been defined, selection for promotion should be conducted along the same lines as those used in recruitment.

All promotion opportunities, including development opportunities that could lead to promotion, should be advertised widely throughout the organization.

✓ The promotion process should factor in the employee's current job performance, skills, abilities, qualities, aspirations and potential. Promotion decisions should also adequately take into account team diversity and company affirmative action measures.

✓ Where posts are advertised internally and externally, the same selection procedures and criteria should apply to both internal and external candidates.

✓ To avoid prejudice or bias, a review panel of more than one person with an equal representation of women and men should assess the applicants' eligibility for promotion. Everyone in the promotion process should be trained in equality, affirmative action, and hiring on merit.

Employers should keep records of promotion appointments. These records should be examined regularly to ensure that appointments are not limited to members of one particular employee group?

<sup>&</sup>lt;sup>7</sup> Guidelines adapted from EOC: Code of practice on the Race Discrimination Ordinance (Hong Kong, China, 2009); New Zealand Employers' Federation: A guide for employers on discrimination in employment (Wellington, 1993); TAFEP: Tripartite guidelines on fair employment practices (Singapore, 2011); and Commission for Racial Equality: Statutory Code of practice on racial equality in employment (London, 2005).



 <sup>&</sup>lt;sup>5</sup>ILO: Women in business and management: gaining momentum (Geneva, 2015); and General Statistics Office of Vietnam: Report on Labour force survey: Quarter 3, 2014 (Summary) (Hanoi, October 2014).
 <sup>6</sup>United Nations Educational, Scientific and Cultural Organization (UNESCO) Institute for Statistics: Higher education in Asia: Expanding Out, Expanding Up The rise of

<sup>&</sup>lt;sup>6</sup>United Nations Educational, Scientific and Cultural Organization (UNESCO) Institute for Statistics: Higher education in Asia: Expanding Out, Expanding Up The rise of graduate education and university research (Montreal, 2014). <sup>7</sup> Guidelines adapted from EOC: Code of practice on the Race Discrimination Ordinance (Hong Kong, China, 2009); New Zealand Employers' Federation: A guide for



## **6 Harassment**

mployers should ensure that all employees in the organization can enjoy a safe and
respectful working environment free from harassment. All staff should be made aware of
what kind of workplace behaviour is acceptable and what is unacceptable.

# 6.1 Harassment and bullying

arassment comprises unwelcome conduct or comments that violate the other person's dignity or create an intimidating, hostile, degrading or offensive work environment. In the workplace, an employer, a supervisor, a colleague, a visitor, a customer — anybody with whom the worker is interacting — can be guilty of harassment.

See also Harassment, section 2.2, Code of Practice for Employers.



## 6.2 Sexual harassment

ccording to the recently launched Code of Conduct on Sexual Harassment in the Workplace : "Sexual harassment" is defined as any behaviour of a sexual nature that affects the dignity of women and men, which is considered as unwanted, unacceptable, inappropriate and offensive to the recipient, and that creates an intimidating, hostile, unstable or offensive work environment.

Unwelcome display of pornographic materials, sexually explicit pictures and objects, screen savers or posters also constitutes sexual harassment.

See also Harassment and Sexual Harassment, section 2.2, Code of Practice for Employers.

## 6.3 Impact of harassment

arassment and bullying at work cause fear, stress, anxiety and physical sickness among employees. It can lead to increased absenteeism, an apparent lack of commitment, poor performance, and even resignation. Preventing harassment at work is essential for worker well-being and good workplace relations, both of which are essential to boosting company productivity. It is both in the employees' and the employer's interest to strictly discourage harassment.

8

<sup>8</sup> Ministry of Labour, Invalids and Social Affairs (MOLISA), VCCI and Vietnamese General Confederation of Labour (VCGL): Code of Conduct on Sexual Harassment in the Workplace (Hanoi, 2015).



Management practices that promote equality

# 6.4 Guidelines for conducting performance appraisals

Ensure that your company has a clear senior management commitment to preventing harassment in the workplace.

Adopt a policy, either separately or as part of the company equality policy, on handling and preventing harassment in the workplace.

See Commit to equality, adopt an equality policy, section 3.1, Booklet 2: Tools to promote equality at work.

Set up an internal grievance system to handle harassment-related complaints. Ensure that complaints are handled effectively, fairly and confidentially. Punish perpetrators adequately.

See Dealing with discrimination-related complaints, section 4, Booklet 2: Tools to promote equality at work.

Ensure that all managers, supervisors and staff understand that harassment in the workplace is unacceptable.

Promote a respectful company culture in building a workplace free from (sexual) harassment.

<sup>9</sup> ILO: "General observation on Convention No. 111", in Report of the Committee of Experts (RCE), International Labour Conference, 91st Session (Geneva, 2003); ILO: Equality and non-discrimination at work in China: Training manual (Beijing, 2010); and N. Haspels et al.: Action against sexual harassment at work in Asia and the Pacific (Bangkok, 2001). See also ACAS: Delivering equality and diversity (London, 2009); and EOC: "Sexual harassment in the workplace", Good management practice series (Hong Kong, China, undated).



## 7 Maternity protection



he Vietnamese Constitution and the Labour Code include provisions on maternity protection, and employers should ensure full compliance with them. Adequate maternity protection is important for the health of the mother and the child. It also helps to ensure that female employees can continue working for the company or organization during pregnancy and after childbirth.

Consideration for the well-being of women workers during maternity also brings benefits to employers. Well-supported working mothers are more likely to return to work after maternity leave. Thus, implementing maternity protection measures in compliance with and even beyond the legal minimums set out in law can help employers keep trained, experienced, loyal and motivated workers.

International standards on maternity protection are set out in the ILO Maternity Protection Convention, 2000 (No. 183). Maternity protection comprises five elements:

- Maternity leave;
- Cash and medical benefits;
- Health protection;
- Employment protection and non-discrimination; and
- Breastfeeding.



## 7.1 Maternity leave

he Vietnamese Labour Code stipulates that all pregnant women employees are entitled to 6 months leave. In case of a multiple birth, the leave is extended by 1 month for each child, counting from the second child. And the Social Insurance Law 2013 provides that workers who adopt children under 6 months old are entitled to maternity leave until the child reaches 6 months. Employers are required to provide all pregnant women with maternity leave, regardless of how long they have worked in the company.

Following maternity leave, women workers have the right to return to the same job or one with the same pay. Within the company, women also retain their seniority and all related benefits. Employers must not require a female employee to work at night, or to work overtime or go on a long working trip when she is at least 7 months pregnant or nursing a child under 12 months of age. The law also stipulates the right of female employees to negotiate additional unpaid leave with the employers once the prescribed maternity leave expires.

See also case study 4. Maternity: Protection under the law, good practices and common bottlenecks in Viet Nam, section 7.5, below.

## 7.2 Cash and medical benefits

n Viet Nam, women on maternity leave who have paid social insurance premiums for full six months or more within twelve months before childbirth or child adoption, are entitled to 100 per cent of the average monthly salary or remuneration of six months preceding the leave on which social insurance premiums are based. Female workers are also entitled to a lump-sum allowance equivalent to two months' common minimum salary for each child following childbirth or adoption of children under 6 months old. The payments come from the State's social insurance fund, which receives monthly contributions from both the workers and the employers. The Labour Code also requires employers to assist and support in building crèches and kindergartens, or in covering a part of the childcare expenses incurred by female employees.



## 7.3 Health protection



regnant or breastfeeding women should never be obliged to perform work prejudicial to the health of mother or child. A female employee who performs heavy work, on reaching her seventh month of pregnancy, is entitled to be transferred to lighter work or to have her daily working hours reduced by one hour while still receiving her full wage. During menstruation periods, a female employee is entitled to a 30 minute break in every working day; and a female employee nursing a child under 12 months of age is entitled to a 60 minute break in every working day with full wage as stipulated in the employment contract.

Additionally, pregnant female employees are entitled to take leave for five prenatal checks-up, one day for each check-up. In case they live far from medical establishments or have pathological signs or abnormal pregnancies, they are entitled to a two-day leave for each prenatal check-up. When encountering miscarriage, abortion, fetocytosis or stillbirth, female workers are entitled from 10 to 50 days of leave, depending on the length of the pregnancy. If female employees remain weak after the maternity leave period, they may take leave for convalescence and health rehabilitation for between five and ten days a year and receive up to 30 per cent of minimum salary for each day from the social insurance fund. The law in Viet Nam allows workers to take leave following contraceptive measures, specifically: (1) a seven-day leave, when implanted with UIDs; and (2) a 15-day leave, when receiving sterilization measures.



# 7.4 Employment protection and non-discrimination

aternity should not be a source of discrimination or disadvantage in employment. Employers should not make any employment decisions on the basis of a woman's pregnancy or maternity leave that negatively affect a pregnant woman's employment status. This includes decisions concerning dismissal, loss of seniority or deduction of wages. The Labour Code prohibits the dismissal, unilateral termination or any form of disciplinary measures against workers who are pregnant, or on maternity leave, or is breast-feeding children under the age of 12 months. The law requires employers to guarantee that after maternity leave, workers can return to the same job or a job with at least the same pay. In case the previous employment is no longer available, the employer must arrange other work for the employee with a wage of not lower than the wage she received prior to the maternity leave. Dismissal of women workers on grounds related to pregnancy is also prohibited in the Maternity Protection Convention, 2000 (No. 183) and the Termination of Employment Convention, 1982 (No. 158). Maternity leave should be counted as work for purposes of calculating seniority.

Employers should not include provisions in their labour contract that restrict female workers' right to get married or bear a child. Use of pregnancy tests as a condition for hiring or continued employment is prohibited.

See also Pre-employment medical examinations and use of pregnancy tests, section 3, Booklet 3: Recruitment practices that promote equality.

# 7.5 Breastfeeding

Upon their return to work, new mothers should be provided breastfeeding breaks and facilities to support continued breastfeeding. The Labour Code stipulates that female employees nursing children under 12 months of age are entitled to 60 minutes breaks in every working day with full wage. If the working environment of a pregnant or breastfeeding woman involves risks such as physical strain or exposure to hazardous agents, the health of breastfeeding woman and her child should also be protected.<sup>10</sup>

<sup>10</sup> ILO Maternity Protection Convention, 2000 (No. 183); Singapore National Tripartite Advisory Panel: *Tripartite guidelines on family friendly workplace practices* (Singapore, 2004); and ILO: "Providing support to working mothers", in *Good practices*, Better Factories Cambodia project (Phnom Penh, 2007).



## **Tips and Tools 17** Maternity protection under Vietnamese law

## MATERNITY LEAVE

"A female employee is entitled to 06 months of prenatal and postnatal leave. In case of a multiple birth, the leave shall be extended by 01 month for each child, counting from the second child. Prenatal leave should not be longer than 02 months." (2012 Labour Code, Article 157.1)

"...Labourers are entitled to the maternity regime in one of the following cases: a) Female labourers get pregnant; b) Female labourers give birth to children; c) Labourers adopt children of under six months old; d) Labourers have IUDs or take sterilization measures..." (2014 Law on Social Insurance, Article 31)

"Workers adopting a child of under six months old are entitled to take leave for enjoying the maternity regime until the child is full six months old." (2014 Law on Social Insurance, Article 36).

## CASH AND MEDICAL BENEFITS

"... Female labourers after giving birth or labourers adopting a child of under six months old are entitled to a lump-sum allowance equivalent to two months' common minimum salary for each child..." (2014 Law on Social Insurance, Article 38).

"... Labourers ... are entitled to 100% of the average of the monthly salary or remuneration of six months preceding the leave on which social insurance premiums are based..." (2014 Law on Social Insurance, Article 39.1).

### HEALTH PROTECTION

"An employer must not require a female employee to work at night, or to work overtime or go on a long working trip in the following circumstances: a) The employee reaches her seventh month of pregnancy; or when working in mountainous, remote, border and island areas, her sixth month of pregnancy; b) The employee is nursing a child under 12 months of age... A female employee who performs heavy work, on reaching her seventh month of pregnancy, is entitled to be transferred to lighter work or to have her daily working hours reduced by 1 hour whilst still receiving her full wage..." (2012 Labour Code, Article 155.1 and 155.2). "Pregnant female labourers are entitled to take leave for five prenatal checks-up, one day for each check-up; in case they live far from medical establishments or have pathological signs or abnormal pregnancies, they are entitled to a two-day leave for each prenatal check-up..." (2014 Law on Social Insurance, Article 32.1).

"...If female labourers remain weak after the maternity leave period provided ... they may take leave for convalescence and health rehabilitation for between five and ten days a year... The daily benefit level shall be equivalent to 30% of the common minimum salary." (2014 Law on Social Insurance, Article 41.3).

### • EMPLOYMENT PROTECTION AND NON-DISCRIMINATION

"The employer must not dismiss a female employee or unilaterally terminate the employment contract of a female employee due to the employee's marriage, pregnancy, maternity leave, or her nursing a child under 12 months of age, …" (2012 Labour Code, Article 155.3). "Cases in which the employer cannot unilaterally terminate an employment contract: the employee on maternity leave in accordance with the Law on Social Insurance". (2012 Labour Code, Article 39.4)

"A female employee shall be guaranteed to be reinstated to her previous employment when she returns to work after the maternity leave as prescribed in Clause 1 and Clause 3 of Article 157 of this Code. In case the previous employment is no longer available, the employer must arrange other work for the employee with a wage of not lower than the wage she received prior to the maternity leave." (2012 Labour Code, Article 158).

"No disciplinary measures shall be taken against an employee for her violation of labour disciplinary regulations during the period when: The employee is pregnant, or on maternity leave, or is breast-feeding children under the age of 12 months". (2012 Labour Code, Article 123.4.d)

## BREASTFEEDING

"... a female employee nursing a child under 12 months of age shall be entitled to 60 minutes breaks in every working day with full wage as stipulated in the employment contract..." (2012 Labour Code, Article 155.5).



## Case Study 14

### Maternity protection under the law: Good practices and bottlenecks for employers

In Viet Nam, increasing number of companies recognize the benefits that improved maternity protection can bring to the well-being, commitment and productivity of the company's female workforce, and implement good practices beyond the legal requirements. In some companies, however, practices still fall short of legal requirements.

#### Compliance –

#### Requirements of maternity protection provisions in Vietnamese law

- Providing at least 6 months maternity leave for all pregnant workers.
- Providing appropriate maternity leave to female employees who adopt or miscarriage.
- Providing, in addition to maternity leave, pre- and post-natal leave for workers according to the law.
- Making regular contributions to the social insurance fund, calculated according to workers' take-home pay and not just basic wage.
- Including maternity leaves in calculating length of service and entitlement to promotion.
- Guarantee that female workers can return to the same job or a job with at least equal pay.

#### Good practices –

#### Company practices providing protection beyond the minimum requirements of the law

- Allowing workers to do lighter work as soon as they inform the human resources department of their pregnancy.
- Provide breastfeeding or childcare facilities on-site.
- Allowing workers to extend their maternity leave as needed, with or without pay.
- Providing new mothers with breastfeeding training.
- Allowing new fathers to take paternity leave with pay after the birth of their child.





#### Common bottlenecks –

#### Practices falling short of the minimum legal requirements

- Pressuring pregnant workers to quit by increasing their workload.
- Pressuring workers into taking shorter maternity leave than legally provides.
- Reducing seniority or other benefits after women workers' return to work following maternity leave.
- Failing to provide one hour of paid time off to workers nursing a child under 12 months old.
- Calculating social insurance contribution according to basic wage and not take-home pay.
- Not providing maternity leave and benefits to workers on part-time, fixed term or casual contracts.
- Failing to renew contract for fixed-term worker on maternity leave.

Source: Adapted from ILO and Cambodian Federation of Employers and Business Associations: Promoting equality and preventing discrimination at work in Cambodia: Promoting equality in the workplace (Phnom Penh, 2013).



# 8 Work-family balance

ara In Viet Nam, demographics are fast-changing. Although Viet Nam's median age of 27.4 years is still relatively young compared with countries such as China (with a median age of 35.2), Evidence shows Viet Nam's population is also ageing. By 2020, the share of the population age 5 to 19 is projected to drop to 22 per cent from 27 per cent in 2010 and from 34 per cent in 1999<sup>11</sup>. This is leading to increased family responsibilities for the working-age population, and more obvious difficulties balancing work and family life. To deal with such change and decrease in labour force, employers should consider designing more flexible work options to retain or attract women and men employees with family responsibilities who might otherwise have to exit from the workforce.

Many companies use family-friendly workplace practices as an integral strategy to enhance their staff's well-being, productivity and commitment to the company. Implementation of familyfriendly practices is beneficial not only to employees, but also to companies. Family-friendly workplace practices can contribute to attracting and retaining talent, enhancing staff morale and productivity, lowering levels of sick leave and absenteeism, reducing staff turnover and incurring lower recruitment and training costs.

Family-friendly practices are important for employees with young children, elderly, sick or family with disabilities in need of care, or employees who for other reasons seek more balance between work and life. Family-friendly workplace schemes may include the following types of measure: • flexible work arrangements such as part-time work, job sharing, a compressed work week and teleworking;

- family-care leaves for such occasions as marriage, paternity, elder care, bereavement and adoption;
- study leaves, career breaks and sabbaticals; and
- child-care facilities or childcare support such as maintaining a day-care centre at the workplace.

The Labour Code states, "an employee is entitled to take a fully paid leave of absence for personal reasons in the following circumstances: marriage, marriage of his/her children, death of his/her natural father or mother; or death of his or her spouse's father or mother; or death of spouse, son or daughter".

<sup>11</sup> Economist Intelligence Unit: Skilled labour shortfalls in Indonesia, the Philippines, Thailand and Viet Nam (London, 2012).



# 8.1 Guidelines for designing and implementing family-friendly workplace schemes



✓ Tailor the family-friendly workplace practices to the needs of both employees and company.

Involve representatives of directly concerned groups of employees in the design and review of family-friendly schemes.

Ensure that employees are aware of available family-friendly workplace schemes, and that all workers have access to these schemes.

✓ Train all managers in family-friendly workplace practices and schemes and in supporting these to nurture a family-friendly workplace culture. Managers should help their staff to tailor flexible work arrangements that meet their individual needs.

✓ Adjust the performance management system so that it allows objective assessment of employee performance in flexible work arrangements<sup>12</sup>.

<sup>12</sup> See TAFEP: Fair employment: Leading fair employment practices handbook (Singapore, 2009); ACAS: Delivering equality and diversity (London, 2009); and EOC: Code of practice on the Family Status Discrimination Ordinance (Hong Kong, China, 1997).



## Case Study 15

#### Work and family challenges in Philippine enterprises

Strong extended family connections are common in the Philippines. Relatives help to look after young children and the elderly, easing the family workload.

Women workers, however, have yet to completely transcend their traditional domestic roles. Nevertheless, many observers note that the division of labour in the home is evolving for young married couples, where men are increasingly engaged in family care. Still, when things do not go well in the home, the woman is blamed. In times of crisis involving the family, women are often expected to take a leave of absence, leave work temporarily or stop working altogether, while men generally move on in their careers. Non-married employees and older workers are also beset by work-family issues. Non-married female employees often shoulder the burden of caring for sick or elderly parents or relatives, and the growing number of women who leave children behind to take jobs overseas is forcing older workers to take on the responsibility of parenting their grandchildren.

Thus Philippine enterprises must confront the effects of work-family demands on their employees and address the following issues:

• Absence and leave for family reasons, including not only to care for children and older people, but also to attend family events such as funerals and baptisms. In unionized firms, as many as 16 different types of leave provisions may be set out in collective agreements;

• "**Presenteeism**", a phenomenon that often goes undetected. To avoid penalties due to unexcused absences, employees go to work even when they are sick or their minds are preoccupied with family matters;

• **Turnover/resignations** when workers cannot cope with work-family demands or family pressures are too great;

Greater demands for increased wages and benefits to cover family needs;



• An increase in disciplinary cases because of absences and the inability of workers to meet company targets; and

#### • Stress and fatigue.

To address those issues, the Employers Confederation of the Philippines (ECOP) encourages its members to develop work and family programmes that accommodate the varying needs of different workers to balance work and family responsibilities. Such efforts can be costly, of course, but where these issues are not properly addressed, companies may find the long-term effects even more costly. Based on its research, ECOP believes that action in this area makes good business sense. By adopting work-family balance initiatives, its members have achieved increased employee satisfaction, greater employee loyalty and commitment to the attainment of work goals and company objectives, lower grievance rates and reduced absences. The research also finds positive impacts on internal and external customer satisfaction, improved quality of products and services, and increased income for the company through greater added value to implementation of work and family programmes.

Sources: ILO: Employers organizations taking the lead on gender equality: Case studies from ten countries (Geneva, ACT/EMP, No. 43, 2005); and ECOP: Cases on business initiatives on work-life (Makati, 2004).



## 9 Reasonable accommodation

Reasonable accommodation" refers to practical modification or adjustment to work arrangements, employment practices, working time or the working environment that enables a qualified applicant or employee with special needs to perform the job. In Viet Nam, provision of reasonable accommodation to persons with disabilities is a legal obligation of employers under Article 33.3 of the 2010 Law on Persons with Disabilities. It is a good practice, however, also to provide reasonable accommodation to workers with special needs related to health, religion, family responsibilities or other reasons. Always remember that those simple adaptations will benefit not only a person with a disability, but all employees. Moreover, it will enhance the company's image and as a result improve workers satisfaction and performance.<sup>13</sup>

Examples of reasonable accommodation measures include the following:

- Modifying office space so employees using wheelchairs can access it;
- Providing printed copies of all company news to workers with hearing disabilities;
- Providing visually impaired employees with glasses that enable them to perform their jobs;
- Providing vegetarian options in the on-site canteen for devout Buddhists; and
- Making all religious and cultural ceremonies in the workplace optional so workers of different religions or ethnicities do not feel pressured into attending them.

Reasonable accommodation measures may be appropriate at any stage of employment. For example, at the recruitment stage it can mean organizing tests and interviews in a wheelchair-accessible location and at times that allow all applicants, including those with family responsibilities, to attend.

<sup>13</sup>Better Work Indonesia: Employing Persons With Disabilities Guideline For Employers (Jakarta, 2013)





Image credit: "Plage braille (de marque Alva)" by Matthieu Faure, 2005, cited on Wikimedia Commons. Permission: double licence GFDL-self et CC-BY-SA.

If candidate employees can perform the job with the help of reasonable accommodation measures, an employer should not reject qualified and suitable job applicants on the grounds of their special needs. However, when such accommodation causes undue hardship for the employers' business operations, the employer is not required to take these measures. What is reasonable and what constitutes undue hardship should be determined on a case-by-case basis.<sup>14</sup>

In Viet Nam, establishments which employ a large number of persons with disabilities are eligible for a range of benefits, including exemption from enterprise income tax, preferential loans, priority and exemption from rent in leasing land, ground and water surface (2010 Law on Persons with Disabilities, Article 34).

<sup>&</sup>lt;sup>14</sup>See ILO Recommendation Concerning HIV and AIDS at the World of Work, 2010 (No. 200), Art. 1(g); ACAS: Delivering equality and diversity (London, 2009); EOC: "Absence of disability as a genuine occupational qualification", in *Good management* practice series (Hong Kong, China, undated); EOC: *Code of practice on the Race Discrimination Ordinance* (Hong Kong, China, 2009); and TAFEP: Fair employment: Leading fair employment practices handbook (Singapore, 2009).



## Case Study 16

#### Good practice in supporting workers with disabilities

Jia Hsin Co., Ltd, a footwear company which supplies a number of global brands including Puma, has been hiring people with disabilities (PWD) since 2010. Over the years, the company has hired an increasing number of workers with disabilities and offered them a range of reasonable accommodations, including adaptive work stations and accessible recreational facilities and bathrooms.

The company has also invested in sensitivity training on interacting with PWDs for all employees. Specifically, they emphasize that PWDs are employees, not recipients of charity, and should be treated fairly but not better than other workers.

In Jia Hsin, a number of the employees have hearing disabilities, so they have invested in hiring and training a number of team leaders who can use sign language. Also to ensure effective communication with employees, all company news and policies are provided to this group in writing, in addition to the notice boards around the factory and team discussion in meetings. In 2015, 16 people with disabilities are working at Jia Hsin Viet Nam.

Ms Nguyen Lam Hoang Ai, Operations Manager and Head of Corporate Social Responsibility and Sustainability, Jia Hsin underlined that the workers with disabilities are highly valued by the company for their discipline, professionalism and attendance. This view is echoed across the country by Dap Cau Garment Co., a garment firm based in Bac Ninh City.





Having been hiring PWDs since the early 2000s, Dap Cau now has over 100 PWDs working in various divisions. Mr Nguyen Duc Thang, Human Resources Director of Dap Cau, highlighted that employee turnover among the employees with disabilities is very low, some stayed with the company for more than ten years. These qualities propelled many of them to become outstanding employees.

Source: Interview with Ms Nguyen Lam Hoang Ai, Senior Manager of Jia Hsin, Viet Nam, 1 Apr. 2015; Telephone interview with Mr Mr Nguyen Duc Thang, 10 Apr. 2015.



## 10 Termination of employment

mployers should ensure that employees are not dismissed, refused contract renewal, laid off or made to retire on discriminatory grounds. Dismissals and retrenchment should be conducted in full compliance with the provisions of the Labour Code, and the principle of equal treatment should be respected.

## 10.1 Dismissal

ismissal must always be fair and reasonable. A decision to dismiss an employee should always be based on documented poor performance or misconduct. For this purpose, employers must maintain accurate and non-biased records on their employees' performance and conduct. Before any decision to dismiss is made, employees should be allowed to present their case and views on the performance ratings in question. The ILO Termination of Employment Convention, 1982 (No. 158) prohibits discriminatory termination of employment for reasons related, among others, to race, sex, pregnancy, maternity leave, temporary absence from work because of illness or injury, or union membership or participation in union activities (Articles 5 and 6).

## **10.2 Post-recruitment procedures**

he Labour Code permits use of fixed duration contracts of up to three years of employment (Article 22). These contracts convert to undetermined duration contracts if any renewal causes the cumulative total time under the employment contracts to extend beyond a total duration of three years. An employer cannot refuse to renew a fixed duration contract on such discriminatory grounds as trade union membership.



## **10.3 Retrenchment**

hen employers need to undertake retrenchment measures, for example due to changes in business volume, care must to taken to ensure all retrenchment policies, procedures and practices are fair and non-discriminatory. If the company is implementing affirmative action measures, these should be taken into account. Any practices that could unjustifiably and disparately affect specific groups of employees (such as women workers or workers with disabilities) should be removed. If aptitude tests are designed and used to select people for redundancy, they should be objective and fair, and consistently administered. Voluntary redundancy pay-outs, if available, should be provided on equal terms to all employees in the same or similar circumstance. When downgrading arrangements are applied, these should be implemented in a non-discriminatory way. Employers should always consult workers' organizations or, where these organizations are not present in the company, representatives of directly concerned employees about the proposed redundancies and the criteria for selection.<sup>15</sup>

The employers should not lay off women more readily than men, justifying this on the assumption that women are secondary income earners in their families. The income earned by female workers may be the main income in her family.

## **10.4 Retirement age**

n Viet Nam, standard retirement is age 55 for women and age 60 for men. However, leaving the job at this age is only mandatory in most public organizations; workers in the private sector can continue to work if their employers agree. Employers should not require women employees to retire earlier than men workers, especially since retirees are entitled to monthly pension only if they have a contributory period of at least 20 years (in normal working conditions). Retirees with shorter contributory periods receive a lump sum, negligible in relation to the pension rights they could expect if they had contributed to the pension scheme for 20 years<sup>16</sup>

<sup>15</sup> See EOC: Code of practice on the Race Discrimination Ordinance (Hong Kong, China, 2009); TAFEP: Tripartite guidelines on fair employment practices (Singapore, 2011); Commission for Racial Equality: Statutory code of practice on racial equality in employment (London, 2005).

<sup>2011);</sup> Commission for Racial Equality: Statutory code of practice on racial equality in employment (London, 2005). <sup>16</sup> World Bank and ILSSA: Women's Retirement Age in Vietnam Gender Equality and Sustainability of the Social Security Fund (Hanoi, 2009).



Forcing women to retire early can be considered sex discrimination because it leads to significant income and pension benefit disparities between women and men. The retirement age differential reverberates throughout the working lives of women in Viet Nam, contributing to other direct and indirect forms of discrimination against women and affecting income, promotion, training opportunities and the proportion of women who reach senior positions in the Government, civil service and other key organizations.<sup>17</sup> The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), in its general recommendation, adopted in 2010, recommended the abolition of different mandatory retirement ages for women and men. Instead, CEDAW encourages setting an optional retirement age that allows women, if they wish, to continue to work and accumulate pension benefits on par with men.<sup>18</sup>

## 10.5 Monitoring dismissals and retrenchment

mployers should keep records on dismissals and retrenchments. These can be used regularly to help monitor whether any groups of employees have been disproportionately subject to dismissals and retrenchments. Workers' organizations or other employee representatives should be involved in the review of the dismissal and retrenchment records. The monitoring data can also be reviewed to see if biased policies, procedures or practices in other areas, such as performance assessment, might be contributing to significant disparities between dismissal rates of different groups of employees.

See Monitor the equality policy and action plan, section 3.5, Booklet 2: Tools to promote equality at work.

A friendly and supportive working environment, aside from encouraging employees' confidence that they are valued and treated fairly, leads to improved staff well-being and corresponding productivity improvements.

<sup>17</sup>UN Viet Nam: UN Discussion Paper: CEDAW, women's rights and retirement age in Viet Nam (Hanoi, 2012).
 <sup>18</sup>Committee on the Elimination of Discrimination against Women: General recommendation No. 27 on older women and protection of their human rights, CEDAW/C/GC/27, 16 Sep. 2010.



An inclusive work environment refers to workplaces that satisfy these criteria:

• All employees are treated with dignity. As part of this, no harassment (including sexual harassment) is tolerated.

• **Employees' special needs are taken into account.** They are provided with appropriate and reasonable support, given their life situations or personal needs.

A fair and inclusive workplace acknowledges differences between groups of workers and their respective needs. In innovative companies, these differences are valued and respected. They are seen as a source of new ideas and creativity that contribute to an organization's competitive advantage. Taking account of the personal needs of individual employees is also to a company's advantage. This helps to ensure that skilled, experienced and motivated employees do not need to leave the company due to childbearing, family responsibilities, health problems or other personal needs that require accommodation in work arrangements.

## 11 Equality in company business practices

eyond human resources management, companies should promote equality and nondiscrimination in all their business practices, within their whole scope of control and influence, both internally and externally. The principles of equality and non-discrimination embedded in Vietnamese law and international legal instruments cover not only employment but also other fields of political, economic, social and cultural life<sub>10</sub> This means that companies should respect the principles of equality and non-discrimination in all their business practices, including subcontracting, customer service, marketing and sourcing.

<sup>19</sup>See, for example, discrimination prohibitions in the United Nations Convention on the Elimination of All Forms of Racial Discrimination (1965) and the Convention on the Elimination of All Forms of Discrimination against Women (1979).





In many countries, national law specifically prohibits discrimination in the provision of goods, services and facilities. In Hong Kong, China, for example, discrimination legislation covers not only employment and education, but also provision of goods, services and facilities; participation in clubs; and, under the Disability Discrimination Ordinance, access to premises.<sup>20</sup> In Viet Nam, the 2006 Law on Gender Equality states that man and woman are equal in all fields of social and family life, including politics, economy, labour, education and training, science and technology, culture and sport, public health and family. While the focus of this law in on gender equality, it is a good business practice to voluntarily extend this kind of non-discrimination to all grounds mentioned in the Labour Code. Companies should see that no customers are harassed or treated in a discriminatory manner, for example refused a service on the basis of their sex, ethnicity, disability or any other personal characteristics. Producing company marketing materials that communicate positive images about diversity and equality is also a good practice, one that can also improve brand image and help to access new market segments.

<sup>20</sup>EOC website http://www.eoc.org.hk (accessed 3 Sep. 2015).





As mentioned, companies generally promote equality and non-discrimination in business practices as part of broader corporate social responsibility (CSR) programmes. In committing to CSR, they affirm their values and principles both in their internal policies and processes and in their interaction with suppliers, subcontractors, buyers, dealers and other business partners and stakeholders. Discriminatory bias should not influence any company business decisions, including selection of subcontractors or suppliers.

Companies with strong commitments to equality include the relevant principles in their supply chain management policies, and require their suppliers and subcontractors to adhere to these principles as well. Including non-discrimination clauses in sourcing and procurement policies, and making eligibility for contracts dependant on observance of the equality principle, is a good practice for both public bodies and private enterprises, thereby extending the impact of company equality policy along its supply chain. VCCI therefore encourages Vietnamese companies to comply with the Code of Practice for Employers on promoting equality and preventing discrimination at work in Viet Nam, which accompanies this four-part guide, as a condition of business with suppliers, subcontractors and other business partners<sup>21</sup>

<sup>21</sup>ILO: Equality at work: Tackling the challenges (Geneva, 2007); and ILO: Time for equality at work (Geneva, 2003).



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