

International Recruitment

Equality Legislation Considerations

Introduction

Equality in the workplace involves ensuring that every individual has equal opportunities in all aspects of employment including access to employment. Employers have an obligation to ensure that their employees have a safe place to work, and that includes a workplace free from discrimination. It is important to remember that it can take up to 20 years to build a reputation as an employer offering a safe place of work that promotes equal opportunity, but this reputation can be lost in minutes. This guide will highlight the key items you need to watch out for to ensure compliance with equality legislation and to ensure that your reputation as a fair and equal employer remains intact, particularly as we see more and more employers beginning to recruit internationally.

Legislation

The key pieces of legislation we look to in the context of Equality are the Employment Equality Acts. The Employment Equality Acts include:

- [The Employment Equality Act 1998](#)
- [The Equality Act 2004](#)
- [The Civil Law \(Miscellaneous Provisions\) Act 2011](#)
- [The Equality \(Miscellaneous Provisions\) Act 2015](#)

The Acts cover not only existing employment relationships, but also the termination of employment and even the treatment of a prospective or former employee.

Crucially, it's important to note that there is no minimum length of service required in order to bring a claim under the Acts, meaning that an individual who was never hired by you or who worked only a number of days or weeks could still take a claim under the act.

Equality Legislation Considerations



The Acts outline nine grounds on which discrimination is outlawed. These are:

1. Gender
2. Civil status
3. Family status
4. Sexual orientation
5. Religious belief
6. Age
7. Disability
8. Race, colour, nationality, ethnic or national origins
9. Membership of the Traveller community

The Acts state that discrimination regarding any of the nine grounds shall be deemed to occur where a person is treated less favourably than another person is, has been or would be treated in a comparable situation, based on any of the nine grounds specified.

The Acts also refer to four types of discrimination that are prohibited. These are:

- Direct discrimination;
- Indirect discrimination;
- Harassment; and
- Victimisation.

Definitions

- **Direct discrimination** is when a worker is treated less favourably than another worker in the same situation or circumstances under any of the nine grounds covered in the Acts.
- **Indirect discrimination** captures the more subtle and often institutionalised ways in which employees may be treated less favourably, but in a manner that is not necessarily obviously linked to their status. The [Irish Human Rights and Equality Commission \(IHREC\)](#) states that indirect discrimination happens where a worker or group of workers or job applicants are treated less favourably as a result of requirements that they might find hard to satisfy. For example, if a job advertisement states that applicants must be of a certain minimum height, this may put women at a particular disadvantage. The rationale for this requirement must be objectively justified. To objectively justify their actions, an employer must show that their actions were fair to do to achieve an important aim. For example, a chef who is part of a religion that believes beards can't be cut or shaved might claim that they are being discriminated against on grounds of religion when told they must be clean shaven or wear a beard mask. However, this is objectively justified by reason of health and safety.
- **Harassment** involves any unwanted conduct related to any of the discriminatory grounds. This unwanted conduct must have the “purpose or effect of violating a person’s dignity and creating an intimidating, hostile, degrading, humiliating or offensive environment for the person.”
- **Victimisation** is essentially where a person is treated less favourably after they make a complaint in relation to equality or where they are involved in a complaint in any way, for example being used as a comparator. A comparator is someone who's in the same or similar situation to the person making the complaint, but who doesn't have the same protected characteristic. A comparison is made between how each person was treated in the situation being complained of.
- Another important aspect of the Employment Equality Acts is the concept of **vicarious liability**. Under this act, vicarious liability essentially means that anything done by a person in the course of their employment shall be treated as done also by that person’s employer, whether it was done with the employer’s knowledge or approval or not. Essentially, the employer is responsible for the actions of their employees.

“Watch Outs” in Recruitment

The Acts prohibit any discrimination on any of the nine grounds in terms of access to employment, meaning any arrangements the employer makes to decide who should be offered employment. This includes:

Advertising

The Acts prohibit any discrimination on any of the nine grounds in practices used when advertising positions. So, it is important to ensure you are careful in the wording of role profiles or job descriptions to ensure that there is no suggestion or interpretation of an intention to discriminate. A good example to watch out for when looking at recruiting internationally is putting “fluency in English” as a requirement where the job requires a basic level of English or conversational English. The need to be careful with wording is also highlighted in the case of the Equality Authority versus an airline which occurred in the year 2000. In this case, the airline placed an advertisement seeking a “young and dynamic professional”. The Equality Officer at the time held that the word “young” clearly indicated, or might reasonably be understood as indicating, an intention to exclude applicants who were not “young”.

Interviews

The same considerations around equality and to ensuring that no discrimination occurs must also be given to interview questions. All interviewees should be asked the same interview questions and the questions should be free from any direct or indirect discriminatory wording. An example case relating to this is a 2007 case involving a teacher versus a school. The claim arose after the claimant was unsuccessful in securing the role of principal. The successful applicant was younger than the claimant. At the interview, all candidates were asked the question, “Can you offer the selection committee a brief outline as to why you feel, at this stage in your career, that you are the most suitable candidate for the position of principal?”. The employee claimed that this question implied that she needed to justify her interest with regard to her age. This question was listed as one of the factors which led the Equality Officer to uphold the age discrimination claim.

In terms of international recruitment, a recent case an individual took against an Irish university highlights where companies can fall down in interview questions. In this case, an Argentinian national applied for a job as a professor of sociology in the university. He was interviewed for the position, but the job was given to a younger Irish candidate. In his claim to the tribunal, he contended that questions or remarks implying discrimination against him had been made at the interview, including reference to how different the "Irish academic model" was. According to the tribunal, in the absence of any notes of the interviews, and given the comments made in the summary report after the interviews, the Equality Officer was not satisfied that the university was able to rebut the presumption of discrimination and the complainant was awarded €10,000.

Questions should not be related to any of the nine grounds, and this includes questions asked in small talk pre- and post-interview. Questions should be based on competencies associated with the job. It would be a good idea for employers to have a database of preapproved interview questions that can be used for each position to avoid discriminatory questions being asked.

Unconscious Bias

Our brain automatically tells us that we are safe with people who look, think and act similar to us. The brain uses shortcuts to navigate an incredible amount of information which leads us to make snap decisions about who we prefer and who we avoid. These automatic preferences and prejudices are what we call biases. As such, unconscious bias is a contributor to a homogenous work environment and sameness thinking, thus a disabler of diversity and an enemy of innovation. It can also unintentionally lead to discrimination of a particular group or groups of people. Employers need to assess their own unconscious bias and be more aware of it when making decisions around filling positions.

Offering Employment

Deciding on who to offer the position should be based on a person's competencies. This should ensure objective decision making. Employers should introduce a scoring system which would reduce the impact of any biases by placing weight on important competencies, assessing these competencies through the interview questions, and scoring the candidate based on these competencies only. The scoring systems should be fair and should be accompanied with an explanation on what the candidate should display to achieve each score.

Before offering employment, employers often require references to be provided. Employers should consider the employee's position before insisting on a particular number of references. This is highlighted in a case where a Polish woman took a claim against an employment agency. The employee went for an interview and did not get the job but was promised her details would be kept on file. Later, the company arrived at her work to recruit workers and she did not go for an interview as she believed her details were on file. When some of her colleagues were picked for jobs ahead of her, she contacted the employment agency to ask why she was not selected. The employee claimed a member of staff at the agency informed her that it was because she only had one referee when two were needed. The company claimed that the woman was asked if she could supply a character reference and she said she could not. The agency said on those grounds it had no option but to turn down her application. The Equality Tribunal ruled it was unfair to ask for a second reference due to her circumstances as an immigrant and length of time out of the working world. The Equality Officer said it was a case of indirect discrimination and ordered the employment agency to pay €7,000 compensation to the complainant.

Policies

An Equal Opportunities Policy should confirm that the organisation is an Equal Opportunities Employer and does not discriminate on any of the nine grounds under the Employment Equality Act. The aim of such a policy is to encourage harmony and respect amongst individuals to promote good working practices. It should include a statement recognising what the organisation seeks to do to ensure and encourage equality and good practices under the policy.

A Recruitment Policy should outline the organisation's recruitment practices. Employers should ensure practices are free from discrimination in all areas, including but not limited to job advertisements, interview questions and scoring, and should provide guidelines and templates on how to ensure this. Organisations should also ensure that fair and appropriate scoring, note-taking, and record keeping is included in their practices. Again, templates can be helpful to include here.

Checklist: Legal DOs and DON'Ts to ensure Equality in Recruitment

Do	✓
Include a statement that you are an “Equal Opportunity Employer” on job advertisements and application forms	
Establish clear selection criteria prior to screening CVs and applications	
Ensure you have a recruitment policy and equal opportunities policy	
Ask all candidates the same questions in interview and screening processes	
Establish a clear scoring system for the interview, with consistent and objective criteria	
Establish how long you will retain candidate data and retain the information necessary to defend any future claim	
Don't	✓
Do not use language which could be interpreted as discriminatory in the job advert	
Do not ask for information such as age, gender, race, religion etc. on your application form	
Do not ask discriminatory questions (i.e., any question related to the nine grounds) for example: How old are you?, Do you have children?. This includes small talk pre- and post-interview. Questions should be based on competencies associated with the job	
Do not take any notes that could be deemed discriminatory or biased in the recruitment and selection process as any notes must be available in the event of a candidate GDPR query or a WRC investigation	