



**European Bank**  
for Reconstruction and Development

# EBRD Performance Requirement 2

## Labour and working conditions

# Non-discrimination and equal opportunity

## Guidance note

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The EBRD wishes to ensure that the working conditions in the projects that it finances are in compliance with national laws and health and safety regulations and international good practice in these areas. The EBRD's specific requirements are summarised in its Performance Requirement (PR2) on labour and working conditions. The information in this document is intended to assist EBRD clients in this regard in their capacity as employers.

### Key points

All EBRD clients should ensure that:

- employment decisions such as recruitment, dismissal and promotion are not made (directly or indirectly) on the basis of personal characteristics such as gender, race, nationality and other characteristics that are unrelated to inherent job requirements.
- there are policies in place which set out a clear commitment to equal opportunity and prohibit non-discrimination and harassment in the workplace. It is also important that these policies are implemented and monitored.
- policies are effectively communicated to all managers and staff, and managers are trained in how to apply the policies consistently.

### EBRD requirements on non-discrimination and equal opportunity (PR 2.12)

Projects will comply with relevant requirements on non-discrimination related to employment. In particular, with reference to the project, the client will:

- not make employment decisions on the basis of personal characteristics, such as gender, race, nationality, political opinion, affiliation to a union, ethnic, social or indigenous origin, religion or belief, marital or family status, disability, age, sexual orientation or gender identity, unrelated to inherent job requirements
- base the employment relationship on the principle of equal opportunities and fair treatment, and will not discriminate with respect to all aspects of the employment relationship, including recruitment and hiring, job assignment, compensation (including wages and benefits),<sup>1</sup> working conditions and terms of employment, including reasonable adaptation of the workplace related to disabilities, access to training, promotion, termination of employment or retirement, and discipline
- take measures to prevent and address harassment including sexual harassment, bullying, intimidation and/or exploitation.

The following measures will not be considered discrimination: positive measures to remedy past discriminatory actions; promotion of local employment opportunities; or selection for a particular job based on the inherent requirements of the job which are in accordance with national law.

<sup>1</sup> The client will take into consideration the principle of equal remuneration for work of equal value.

# 1. Overview

Workplace discrimination is prohibited by law in all of the EBRD's countries of operations, in line with PR2.12 and ILO conventions. All EBRD countries of operations have ratified the relevant ILO conventions which relate to non-discrimination (C111) and the right to equal remuneration for work of equal value (C100).

As well as being a breach of individual rights, discrimination in employment is not good business practice. It prevents workers from making their fullest possible contribution to the workplace and impedes the creation of a harmonious, motivated and productive working environment. In broader terms, employment discrimination generates socio-economic inequalities that undermine social cohesion and slow poverty reduction.

At a minimum, the EBRD requires that clients adopt clear and transparent policies that encourage workplace decision-making on the basis of personal merit rather than irrelevant personal characteristics.

## Equal pay for work of equal value

PR2.12 requires clients to consider the principle of equal remuneration for work of equal value.

This means that men and women should receive equal remuneration, not only for carrying out the same work but also for carrying out work which is of an entirely different nature but is of equal value in terms of the effort, skill and decision-making required.

This principle of equality pertains to all the elements of remuneration, including basic salary, as well as other payments and benefits.

# 2. What is discrimination?

Discrimination involves **treating people differently on the basis of a personal characteristic that is unrelated to their ability to do the job**. Prohibited grounds under PR2 include gender, race, nationality, political opinion, affiliation to a union, ethnic, social or indigenous origin, religion or belief, marital or family status, disability, age, sexual orientation or gender identity. Non-discrimination measures should apply to all workers.

**Discrimination may be direct or indirect and does not have to be intentional.** Practices which appear neutral but result in the unequal treatment of people with certain characteristics are called indirect discrimination. For example, indirect discrimination may arise if part-time workers are targeted for retrenchment, where women are more likely to be concentrated in this category than men. Discrimination may also include harassment and bullying.

## Some exceptions to non-discrimination requirements

- Distinctions based on the inherent requirements of the particular job or task is permissible, although this exception should be applied narrowly. For instance, an employer may not be able to hire a worker with a disability if this would lead to a real risk to the health or safety of the worker (or others) and it is not reasonably possible for the employer to make an adjustment to the workplace to enable the worker to perform the job safely.
- Measures to address specific needs of certain workers may be permissible under international law (such as maternity protection for women) or under national laws designed to meet the needs of persons who are generally recognised to require special protection or assistance (such as preferential treatment of women in hiring in order to remedy the effects of past discrimination).
- In a number of EBRD countries of operations, there is legislation that prohibits women from doing certain types of work (such as heavy lifting, hazardous work or night work). In several countries these restrictions take the form of long lists of jobs in different sectors from which women are legally barred. However, clients should not use this as a reason to impose other 'protective' measures for women that limit their access to jobs and professional development.

## 3. When can workplace discrimination arise?

<b>Recruitment, job assignment, training, promotion and termination</b>	<ul style="list-style-type: none"> <li>• Discriminatory reasons should not be a factor in hiring, job assignment, training, promotion, training and termination decisions, including redundancy.</li> <li>• Job announcements, application forms or interviews should not refer to an applicant's gender, marital status, age, race, disability or other personal characteristic that is irrelevant to the job. For example, women should never be asked if they are married or have children (or are planning to) during the recruitment process. Women should only be asked if they are pregnant if there is a genuine health and safety risk involved (such as exposure to hazardous chemicals).</li> <li>• The procedure and criteria applied during retrenchment phases should be objective and transparent and should not disadvantage one group over another.</li> </ul>
<b>Wages and conditions of work</b>	<ul style="list-style-type: none"> <li>• Workers should be treated equally in relation to working conditions (working hours, security of tenure, leave, safety and health measures, social security and other benefits) and pay (including additional payments such as overtime, bonuses, allowances and in kind benefits).</li> <li>• Men and women must receive equal pay for work of equal value. This means that rates of remuneration (including the basic wage and any additional cash or non-cash benefits) must be established without any discrimination based on gender.</li> </ul>
<b>Health assessments</b>	<ul style="list-style-type: none"> <li>• Job applicants or workers should not be asked about or to undertake health or pregnancy tests except where there is a genuine health and safety need that is closely linked to the requirements of the job.</li> <li>• Job applicants or workers should not be asked directly or indirectly about HIV/AIDS status.</li> <li>• Where there is a clear need to collect health information, safeguards should be put in place to ensure that workers' rights to privacy and data protection are respected (in line with PR2.7).</li> </ul>
<b>Workplace adaptation</b>	<ul style="list-style-type: none"> <li>• Employers should make necessary adaptations to the workplace to accommodate the needs of disabled workers and take steps to enable workers with disabilities to retain their work, unless this imposes a disproportionate burden on the employer. In particular, where new facilities are planned, the needs of disabled workers – including access and basic facilities – should be anticipated and accommodated. Specific and additional requirements on workplace adaptation for disabled workers may be contained in national law.</li> <li>• Reasonable accommodation may be required for pregnant women, although this should not act as a disadvantage. Pregnant women should not be involved in activities that create substantial health risks to them or their babies. However, pregnancy should not be used as a reason to discriminate against women or to limit their professional development opportunities.</li> </ul>

## 4. Recruitment: how to find the best person for the job

Avoiding discrimination in recruitment is not just about meeting legal requirements but about making sure that the best person is recruited for the job.

The EBRD does not insist that clients should employ particular individuals or individuals from a defined ethnic group. Rather, the client must have recruiting procedures which are objective and seek to recruit the best person for the job on the basis of personal merit rather than arbitrary personal criteria.

To assure the EBRD that there is no risk of discrimination occurring in a recruitment exercise, clients should put in place and implement procedures on how recruitment will be carried out, which ensure that:

- there is a clear job description for every job
- where possible, jobs are advertised publicly and to as wide a group as possible
- job advertisements or application forms do not refer to discriminatory requirements such as age, gender, race or ethnic origin (except in the very rare circumstances that this is a genuine requirement for the job)
- steps are taken to ensure that applications are received from significantly under-represented groups such as women, particular ethnic groups
- pregnancy or health testing (such as HIV/AIDS) is not a part of the recruitment process
- interviewers do not ask questions of a personal nature - for example, about marital status, family responsibilities, pregnancy or sexual orientation
- selection for the job is made on the basis of clear, pre-determined and objective criteria of what is necessary for the job in terms of experience and skills
- staff who are carrying out recruitment are ideally trained to do so and should be adopting common standards.

## 5. Harassment

Harassment should not be tolerated in the workplace. It is often based on prohibited grounds for discrimination and may include sexual harassment, bullying, intimidation or exploitation. Even if senior management is not directly involved in harassment, an employer has primary responsibility for providing a safe and healthy work environment. Examples of harassment include:

- telling insulting jokes about particular racial groups
- sending explicit or sexually suggestive emails or text messages
- displaying racially offensive or pornographic posters or material on computers
- making derogatory comments or taunts about someone's race.

**Sexual harassment** is any unwanted or unwelcome sexual behaviour where a reasonable person would have anticipated the possibility that the person harassed would feel offended, humiliated or intimidated. It has nothing to do with mutual attraction or consensual behaviour. It is an extremely serious issue that is often under-reported but should not be ignored or underestimated.

## 6. Employer safeguards against discrimination and harassment

There are a number of things that an EBRD client can do to ensure that appropriate policies and procedures are in place to comply with PR2.12.

Develop policies to promote non-discrimination and equal treatment and to prevent harassment (including sexual harassment) and bullying in the workplace, and make sure that these policies are clearly communicated and accessible to management, supervisors and workers. Ensure that managers and supervisors are trained on how to apply the policies consistently.

- Ensure that job advertisements, job descriptions and applications do not refer to race, gender and other prohibited grounds (except rare cases where legal exceptions apply).
- Ensure that decisions on hiring, job assignment, working conditions, pay, benefits, training, promotion, termination or redundancy are not made on the basis of discriminatory grounds or on the basis of criteria which disproportionately impact on one group more than another.
- Ensure that women and men are paid the same wages for work of the same value – that is, remuneration is based on the employee's skills, experience, responsibilities and other objective, non-gender-related factors.
- Monitor the workplace for any form of harassment and, where it is found, act quickly to address it.
- Ensure that workers are not asked about or required to undergo health or pregnancy testing, except where there is a genuine health and safety need, and that all health data and records are kept strictly confidential.
- Take steps to enable workers with disabilities to retain their jobs and make accommodations required by national law for physically disabled workers.
- Ensure that worker grievance mechanisms are sufficiently discreet to allow employees to voice concerns confidentially, and adapted to effectively deal to receive complaints for cases of sexual harassment. It is also good practice to have both a male and female staff member available for receiving and processing grievances so that employees can choose who they would be most comfortable speaking to.