

Non-discrimination and equal opportunity: guidance for clients

Key points to be followed:

- >> Employment decisions, such as recruitment, dismissal, promotion, are not made (directly or indirectly) on the basis of personal characteristics such as sex, race, nationality, etc, but rather on the ability to do the job
- >> Employer has policies which promote equality of treatment and prohibit harassment in the workplace
- >> Managers are trained in principles of non-discrimination

This information is intended to assist clients of the European Bank for Reconstruction and Development (EBRD) in their capacity as employers.

EBRD wishes to ensure that the working conditions in the projects that it finances are in compliance with national labour laws and health and safety regulations and international good practice in these areas. The EBRD's specific requirements are summarised in its Performance Requirement (PR 2) on labour and working conditions. The provisions on non-discrimination are stated below.

PR2.10 Non-discrimination and equal opportunity: Projects will comply with EU requirements on non-discrimination related to employment. In particular, the client will:

- Not make employment decisions on the basis of personal characteristics such as gender, race, nationality, ethnic origin, religion or belief, disability, age or sexual orientation, unrelated to inherent job requirements
- Base the employment relationship on the principle of equal opportunity and fair treatment, and will not discriminate with respect to all aspects of the employment relationship, including recruitment and hiring, compensation (including wages and benefits), working conditions and terms of employment, access to training, promotion, termination of employment or retirement, and discipline.

Special measures of protection or assistance to remedy past discrimination or promote local employment opportunities or selection for a particular job based on the inherent requirements of the job, which are in accordance with national law, will not be deemed discrimination.

EBRD seeks to promote the core values of the EU, including non-discrimination and equal opportunity. For this reason PR2.10 refers to the requirements of EU legislation on non-discrimination in employment. PR2.10 also clearly reiterates the grounds for potential discrimination in employment, meaning that at the present time, there is full congruence between the grounds for discrimination included in EU legislation and those contained in PR2.10.

Workplace discrimination is prohibited in all of EBRD's countries of operation, in line with PR2.10 and ILO conventions. All EBRD countries of operation 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, 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.

1. 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, ethnic origin, religion or belief, disability, age or sexual orientation. 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 are permissible, although this exception should be applied narrowly.
- Measures to assist or protect some workers may be permissible under international law (e.g. maternity protection for women), or under national laws designed to meet the needs of persons who are generally recognized to require special protection or assistance (e.g. preferential treatment to women in hiring in order to remedy the effects of past discrimination).

2. Discrimination at different stages of the employment relationship

Recruitment, training, promotion and termination

- Discriminatory reasons should not be a factor in hiring, training, promotion, training and termination decisions, including redundancy.
- 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, as a general rule, women should not be asked if they are married, pregnant or have children (or are planning to).
- The procedure and criteria applied during retrenchment phases should be objective and transparent and should not disadvantage one group over another.

Wages and conditions of work

- Workers should be treated equally in relation to working conditions (e.g. 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).
- 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 sex.

Health assessments

- Job applicants or workers should not be asked about or to undertake health or pregnancy tests (except as strictly required by health and safety laws) or be asked directly or indirectly about HIV/AIDS status.

Work adaptation

- Consistent with EU non-discrimination requirements, 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.
- 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.

Recruitment: finding 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. 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 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 – eg women, particular ethnic groups
- Pregnancy or health testing (e.g. 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, objective criteria of what is necessary for the job in terms of experience and skill
- Staff who are carrying out recruitment have ideally had some training and should be adopting common standards

3. Employer safeguards against discrimination

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 PR2.10.

→ 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 they are clearly

communicated and accessible to management, supervisors and workers. Ensure that managers and supervisors are trained in the application of the policies.

- Ensure that job advertisements, job descriptions and applications do not refer to applicants/workers race, gender etc (except rare cases where legal exceptions apply)
- Ensure that decisions on hiring, working conditions, pay, benefits, training, promotion, termination, 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, i.e. 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
- Take steps to enable workers with disabilities to retain their jobs and make accommodations required by national law for physically disabled persons